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Submitted by
D in Error
Argued by Wolff
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 350[redacted]6

JOSEPH A. WALKER, PLAINTIFF IN ERROR,

vs.

CHARLES S. SAUVINET.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED DECEMBER 7, 1872.

Affirmed Ch Jus

SUPREME COURT OF THE UNITED STATES.

No. 350.

JOSEPH A. WALKER, PLAINTIFF IN ERROR,

vs.

CHARLES S. SAUVINET.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 3513. Supreme court of La. Filed Nov. 6th, 1871.
(Signed) M. P. JULIAN,
Deputy Clerk.

State of Louisiana, eighth district court for the parish of Orleans.

C. S. SAUVINET
vs.
J. A. WALKER ET AL. } No. 399.

E. Filleul for plaintiff; Jos. B. Horner and A. A. Attocha for defendant.

Transcript of appeal returnable to the supreme court of the State of Louisiana, on the first Monday of November, 1871.

2 State of Louisiana, eighth district court for the parish of Orleans

C. S. SAUVINET
vs
J. A. WALKER. } No. 399.

Petition.—Filed Jan. 26, 1871.

To the honorable judge of the eighth district court.

To the honorable judge of the eighth district court for the parish of Orleans:

The petition of C. S. Sauvinet, of the city of New Orleans, respectfully shews:

That, on the 20th day of January, 1871, your petitioner called at the coffee-house known as the "Bank," No. 6 Royal st., a place of public resort, owned by J. A. Walker and Frank Landfried, who are licensed under the laws of this State to keep the same, and of the ser-
3 vants and agents of the said establishment, requested to be served and supplied with refreshments that were kept and sold in said coffee-house by said J. A. Walker and Frank Landfried.

Your petitioner avers that he offered to pay the usual and customary price for the refreshments so called for by him. That he was orderly and respectful in his conduct, manner, and behavior while in said establishment.

That J. A. Walker, Frank Landfried, their agents and servants, then and there, wrongfully and intentionally refused to furnish your petitioner the refreshments so called for, and demanded, because your petitioner was a colored person, and ordered him to leave the establishment.

Your petitioner further avers that, under the constitution and
4 laws of this State, he had the right with others, of whatever class or color, of access to said establishment and to be supplied with such refreshments as said J. A. Walker and Frank Landfried had there for sale, and were then being sold by them to others.

And your petitioner further avers that the only ground upon which the said agents and servants of the said J. A. Walker and Frank Landfried refused to furnish your petitioner with the refreshments he called for, was that he was a colored man and not to be accom'odated in said

establishment. That your petitioner has always enjoyed the esteem and friendship of his fellow-citizens, that he has been several times chosen to fill public offices of great trust, profit, and honor; that at the last general election he has been elected the civil sheriff of the parish of Orleans, that he has been commissioned by the governor of the State of Louisiana, and is now exercising the duties of the said office.

That by reason of the acts complained of, he was greatly outraged in his feelings, and has sustained damages to the amount of ten thousand dollars.

Wherefore your petitioner prays that said J. A. Walker and Frank Landfried be cited to appear and answer this petition, and after due proceedings that they be condemned severally and in solido to pay to your petitioner the said sum of ten thousand dollars, with costs; and he further prays that judgment be rendered against said J. A. Walker and Frank Landfried, declaring their license from the State and city to keep the said establishment to be forfeited, and the said establishment to be closed. And your petitioner prays for general relief, and as in duty bound.

E. FILLEUL, *Counsel.*

Citation.—Issued 26 January, 1871.

C. S. SAUVINET
vs.
J. A. WALKER & ALS. } No. 399.

Mr. FRANK LANDFRIED, N. O., La.:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the eighth district court for the parish of Orleans, in ten days after the service hereof.

Witness the honorable Henry C. Dibble, judge of the said court, the twenty-sixth day of January, in the year of our Lord eighteen hundred and seventy-one.

[SEAL.] (Signed) ROBERT LYNNE,
D'y Clerk.

Sheriff's return on foregoing.—Filed January 27th, 1871.

Received, New Orleans, January 26, 1871, and on the same day served a copy with petition, personally on Frank Landfried, at his place of business, No. 8 Carondelet st., at 4 o'clock and 40 minutes p. m.

(Signed) P. CREAGH,
Coroner 1st, 4th, 5th, and 6th Districts.

Citation.—Issued 26 Jan'y, 1871.

State of Louisiana, eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER AND ALS. } No. 399.

Mr. J. A. WALKER, N. O. La.:

You are hereby summoned to comply with the demand contained in

the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the eighth district
8 court for the parish of Orleans, in ten days after the service hereof.

Witness the honorable Henry C. Dibble, judge of the said court, the twenty-sixth day of January, in the year of our Lord eighteen hundred and seventy-one.

(Signed) ROBERT LYNNE,
D'y Clerk.

Sheriff's return on foregoing.—Filed January 27th, 1871.

Received, New Orleans, January 26th, 1871, and on the same day served a copy, with petition, at the place of business of J. A. Walker, No. 6 Royal st., at 4 o'clock and 30 minutes p. m.

(Signed) P. CREAGH,
Coroner 1st, 4th, 5th, & 6th Dist's.

Eighth district court for the parish of Orleans.

C. S. SAUVINET
vs.
J. A. WALKER & AL. } No. 399.

9 *Answer.—Filed 3d Feb'y,* 1871.

Now comes into court, by his undersigned counsel, Frank Landfried, made defendant in the above-entitled and numbered cause, and, after expressly reserving to himself all exceptions and other legal means of defence, for answer to plaintiff's petition and demand herein, says:

That he denies all and singular the facts and allegations of said plaintiff's petition and demand herein.

Respondent, for further answer herein, says that he denies having any connection with or interest in the coffee-house and establishment known as the "Bank," situated at No. six Royal street; that he was formerly in partnership with Joseph Alphonse Walker and a part-owner of said establishment; but that, on the eleventh of February, 1870, said partnership was dissolved, and he then sold all and singular his right,
10 and title, and interest in and to the said establishment unto said Joseph Alphonse Walker, and from that moment ceased to have any interest in or connection with said establishment.

That plaintiff herein has therefore no right of acting whatsoever against him.

Wherefore he prays that plaintiff's demand be hence dismissed at said plaintiff's cost, and for judgment in his (respondent's) favor, with costs, and her further prays for all general and equitable relief in the premises.

A. L. TISSOT,
Of Counsel.

This answer of Frank Landfried filed February 3rd, 1871.

(Signed) ROBERT LYNNE,
D'y Clerk.

Answer.—Filed 4th Feb'y, 1871.

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER AND ALS. } No. 399.

Answer of J. A. Walker.

Now into this honorable court, by his undersigned attorneys,
11 comes Joseph A. Walker, made defendant herein, and, for answer to plaintiff's petition, pleads a general denial of all the allegations therein contained, and specially denies that he is in any manner indebted to said plaintiff.

Wherefore respondent prays for judgment in his favor, with costs, for a trial by jury, and for all general relief.

A. A. ATTOCHA &
HORNOR & BENEDICT,
Att'ys.

Filed February 4th, 1871.

J. D. TAYLOR.
D'y Clerk.

Motion for subpœna duces tecum.

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

On motion of E. Filleul, of counsel for plaintiff, it is ordered that subpœna duces tecum issue to J. A. Walker commanding him to bring into court, on Wednesday, the 1st of March, 1871, the State license
12 and city license, which he is bound by law to take, in order to keep his coffee-house establishment, to be used in evidence on the trial of this case.

(Extract from minutes 27th Feb'y, 1871.)

J. D. TAYLOR,
D'y Clerk.

Subpœna duces tecum.—Issued February 27th, 1871.

State of Louisiana, eighth district court for the parish of Orleans.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

To J. A. WALKER, Esq., New Orleans, La.:

You are hereby commanded, in the name of the eighth district court for the parish of Orleans, to bring with you and produce in open court, on Wednesday, the 1st day of March, 1871, at the hour of 10 a. m., to be used in evidence at the trial of the above-entitled case by the plaint-

iffs therein, the State license and city license, which you are bound by law to take in order to keep your coffee-house established.

13 And herein you are not to fail, under penalty of the law.

Witness the honorable Henry C. Dibble, judge of the said court, this twenty-seventh day of February, 1871.

(Signed) ROBERT LYNNE,
D'y Clerk.

Sheriff's return on foregoing.—Filed March 1st, 1871.

Received, New Orleans, February 28th, 1871, and on the same day, month, and year served a copy of the within subpœna duces tecum on the defendant herein, J. A. Walker, in person.

(Signed) P. CREAGH,
Coroner 1st, 4th, 5th, & 6th Dist's.

Challenge to jury, No. 1.

Eighth district court.

C. S. SAUVINET
vs. } No. 399.
J. A. WALKER.

14 This case coming on to be tried before the court and a jury on 1st day of March, 1871, the defendant, by Hornor and Benedict and A. A. Attocha, counsel, presented a challenge to the array of the jury, and asked that the panel be quashed and set aside, and, as grounds for such challenge, allege the following:

1st. The law is peremptory in ordering the sheriff of the parish of Orleans to make, in the month of December, in each year, a list of the qualified electors in the parish to serve as jurors in the civil courts. The sheriff having failed to make such list in the month of December, 1870, no jury for the year 1871 can be legally drawn.

2nd. The panel of jurors for the present term has not been drawn from a list of qualified electors of the parish of Orleans, because,

1st. The sheriff has merely copied the list of registered voters obtained from the State register, and though registration is an evi-

15 dence of qualification as an elector, non-registration is not evidence of lack of qualification.

2nd. The law requires the sheriff to make his own list of qualified electors, and he must not limit himself to the registration-list.

3rd. The registration of voters preparatory to the election of November, 1870, excluded many citizens who were disqualified by article 99 of the constitution of the State; but at the election held on the 7th day of November, 1870, an amendment to said article 99 was adopted, whereby a very large number of citizens excluded under the registration became qualified electors, and their names should be on the jury-list for the year 1871.

After hearing counsel, it is ordered by the court that the foregoing exception and challenge be overruled.

Filed 1st March, 1871.

(Signed) J. D. TAYLOR,
D'y Clerk.

16 Exception and challenge to jury, No. 2, filed 1st March, 1871.

J. D. TAYLOR,
D'y Clerk.

Exception & challenge No. 2.—Filed March 1st, 1871.

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

The defendant, by Hornor and Benedict and Attocha, 'is counsel, in addition to the challenge to the array of the jury, respectfully submit' the following:

The sheriff of the parish of Orleans is a party to, and personally interested in this suit, hence a panel of jurors drawn and summoned by him are incompetent to try the cause.

Testimony on exception, &c.

Filed March 1st, 1871.

Q. M. TENNISON, *D'y Clerk.*

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

17 Defendant files two exceptions, challenging the panel of jurors.

F. M. SEGUR sworn for defendant.

Q. What is your occupation?
A. Deputy sheriff.
Q. Under whom?
A. Under Mr. Sauvinet, the sheriff.
Q. What part of the business of the sheriff's office do you attend to?
A. I am chief deputy.
Q. Do you know who drew this jury, called to serve in this case?
A. It was drawn by a deputy sheriff and a deputy clerk.
Q. Sauvinet's deputy sheriff?
A. Yes.
Q. Under Sauvinet's order as sheriff and his direction?
A. Yes.
Q. Who made the list from which this jury was drawn?
A. The list was made by both the deputies.

Q. There was a list of jurors from which the several juries are
18 drawn?

A. The list is on the book.

Q. I am not speaking of the list drawn for this court; but has there been a general list of jurors made by the sheriff, for jury purposes—where did you get the names from, here to-day?
A. Those names were put on the book.
Q. Where were they drawn from?
A. From the ballot-box.
Q. How had the names got in the ballot-box; who put them there?
A. The ballot-box was prepared before I was in the office.
Q. When did you get in the office?
A. On the 23d of February, 1871.

Q. Do you know who had prepared that ballot-box?
A. I do not know.
Q. Who was chief deputy before you?
A. Mr. Walton; but he was not attending to the office. Sauvinet was attending to it.
Q. You do not know who made out this list of qualified electors?
A. No.

19 C. S. SAUVINET sworn for defendant.

Q. You are sheriff of the parish of Orleans?
A. Yes.
Q. These names that have been called as jurors; where did they come from?
A. They came from the books of the registrar of voters. They are taken from the list precinct books of the voters of the parish of Orleans.
Q. In whose possession were those books?
A. In the possession of the State registrar, Mr. Blanchard.
Q. Where did you obtain those books?
A. I never had them in my possession. I sent my deputies in Mr. Blanchard's office, and these names were copied in his office.
Q. When was that?
A. That was about 15 or 20 days ago.
Q. Since the 1st of January?
A. Yes.
Q. Those names were copied from the registration books by deputies of yours?
A. Yes.

20 Q. Those registration-books that you speak of are of the last registration, the registration of 1870?
A. Of the last election of the names of those citizens who were entitled to vote then.
Q. Then you have made no list of your own?
A. I consider that I have made a list of my own, since those names were copied from the registration books.
Q. And that is the only list you have made?
A. Yes.
Q. And that is made since the 1st of January?
A. Yes.

Cross-examined:

Q. These jurors now in attendance were drawn from that list?
A. Yes.
Q. The names of the jurors which you had copied were all placed in that wheel?
A. Yes.
Q. And these names were drawn from that box?

21 A. Yes; from some 36,000 names.

Re-examined:

Q. Was the present jury drawn from that list, the printed list prepared in December?
A. No; I will say this: These printed lists are lists of the names of all citizens entitled to vote. Those lists were given to me by Mr. Blanchard, and I took them; but the list of jurors from which these names were drawn was taken from the registrar's books at his own office. Therefore they are just the same names as on these lists.

Q. Are those printed lists the lists from which you made your lists?
A. If you mean whether I made a copy from that list, name by name, I should say no; but I would again say that the names were taken from the books of the registration office, are the same as on that list.
22 Q. Where did you get these lists?
A. From the registrar.
Q. Did you make up these printed lists in person or by deputy?
A. They were printed by Mr. Blanchard.
Q. You did not make them up by person or by deputy?
A. No.

Cross-examined:

Q. In December last did you procure a list of the qualified voters of this parish?
A. Yes.
Q. Which list or lists were submitted to the district judges, and approved by them?
A. Yes.
Q. Which list is now in court?
A. Yes.
Q. That list contains all the voters of the parish of Orleans?
A. Yes.
Q. But it does not contain their residences?
A. No, sir.
23 Q. Then when you were ordered to make a new panel of jurors, you had to go back to the books of the registrar?
A. Yes.
Q. You copied then the names from the books of the registrar?
A. Yes; I copied from the books of the registrar.
Q. In order to get the residences?
A. Yes.
Q. These lists submitted to the judges in December, and which were printed, do they contain the same names as those you copied from the books of the registrar?
A. I could not say positively as to that; I presume they do.
Q. These printed lists were prepared from the books?
A. They are from Mr. Blanchard, and they were given to me as the real list of voters.

Re-examined:

Q. Do you know that this list contains all the names of the qualified voters of the parish, on the 26th of Dec., 1870?
24 A. Of course the lists were printed before that time, and there may have been persons who have become voters since it was printed.
Q. Do you know that it contains all the names of all the voters on the 1st of December, 1870?
A. They were given to me as such.
Q. Did you ever compare these lists with the lists in Mr. Blanchard's office, from which you obtained your list?
A. No.
Q. Did you ever employ a deputy to do it?
A. No, sir; I employed a number of deputies to copy the names from the books.
Q. But they never compared these names with the names on these printed lists?

A. No.
Q. You are the plaintiff in the case?
A. Yes.
Defendant offers in evidence the printed list of qualified voters.

25 *Exceptions, &c., sustained.—Minutes, March 1st*, 1871.

Present the Hon. H. C. Dibble, judge.

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER ET AL. } No. 399.

This case, fixed for this day for trial by jury, came on.
Present, E. Filleul & A. P. Field for plaintiff.
Present, Hornor & Benedict, & Attocha, for defendant.
Counsel for defendant offers two peremptory challenges to the array of jurors in attendance, which challenges are filed and numbered No. 1 and No. 2; the first of which the court overruled, and the second of which the court sustained, and ordered this cause to be continued to be called on Saturday, March 4th, 1871.

Venire facias.—Issued March 8th, 1871.

26 Eighth district court, for the parish of Orleans, the State of Louisiana.

C. S. SAUVINET
vs.
J. A. WALKER ET ALS. } No. 399.

To Patrick Creagh, coroner of 1st, 4th, 5th, & 6th districts of New Orleans, greeting:

You are hereby commanded, in the name of the State of Louisiana and of the eighth district court for the parish of Orleans, to draw, according to law, a panel of seventy-five qualified petit jurors, to try the case of C. S. Sauvinet vs. J. A. Walker et als., now pending before this honorable court, said jurors to be in attendance before our said court on Thursday, March 16th, 1871, at 10 o'clock a. m. And herein fail not under penalty of the law.

Witness the honorable Henry C. Dibble, judge of our said
27 court, at the city of New Orleans, this eighth day of March, in the year of our Lord eighteen hundred and seventy-one, and in the ninety-fifth year of the Independence of the United States.

(Signed) J. D. TAYLOR,
D'y Clerk.

Sheriff's return on the foregoing.

Filed 15th March, 1871.

ROBERT LYNNE, *D'y Clerk.*

Received March 9th, 1871, and on the 10th day of the same month and year, executed the within order of court, by drawing a panel of

seventy-five qualified jurors, to be and appear before the honorable the eighth district court, for the parish of Orleans, on Thursday, the 16th day of March, 1871, there to remain until finally discharged by said honorable court.

P. CREAGH,
Coroner 1st, 4th, 5th, & 6th districts, for the parish of Orleans.

28 *Motion for subpœna duces tecum.*

Eighth district court.

C. S. SAUVINET *vs.* J. A. WALKER. } No. 399.

Minutes March 6th, 1871.

On motion of E. Filleul, of counsel for Sauvinet, it is ordered that a subpœna duces tecum issue to J. A. Walker, commanding him to produce into court his State and city license for the year 1871 and 1870, on Friday, the 19th instant, at 10 o'clock, on the trial of this case.

Filed March 6th, 1871.

T. D. TAYLOR, *D'y Clerk.*

Subpœna duces tecum.—Issued March 16th, 1871.

State of Louisiana, eighth district court for the parish of Orleans.

C. S. SAUVINET *vs.* J. A. WALKER ET ALS. } No. 399.

To J. A. Walker, esq., of New Orleans, La.:

29 You are hereby commanded, in the name of the eighth district court, for the parish of Orleans, to bring with you and produce in open court on Friday, the 17th day of March, 1871, at the hour of 10 a. m., to be used in evidence at the trial of the above-entitled case, by the plaintiff therein, your State and city license for the years 1871 and 1870.

And herein you are not to fail under penalty of the law.

Witness the honorable Henry C. Dibble, judge of the said court, this 16th day of March, 1871.

ROBERT LYNNE, *D'y Clerk.*

Sheriff's return on foregoing.—Filed March 16th, 1871.

Received March 16th, and on the same day, month and year, served copy of within subpœna duces tecum on J. A. Walker, defendant
30 herein, by leaving the same in the hands of Mr. Oari, a person apparently over the age of twenty-one years, living and residing with said defendant, at his domicil on Royal st., between Canal and Custom-house.

Returned same day.

E. CHIXI,
D'y Coroner for 1st, 4th, 5th & 6th districts of New Orleans.

Testimony.—Filed March 16th, 1871.

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER ET ALS. } No. 399.

Index.

Examination of McConnell as juror. Suit discontinued as to F. Landfried. Blank license marked A.

McCONNELL called as a juror, upon being asked whether he had formed any opinion upon this case, said that he had an opinion,
31 and that it would require strong evidence to convince him to the contrary. He said, however, that he should endeavor as a juror to find a fair verdict, according to the law and the evidences. He said further, that, in his opinion, it was the duty of all law-abiding citizens to obey such laws as should be passed and duly signed.

(The above is noted down at the request of counsel for the purpose of framing a bill of exceptions to the ruling of the court in regard to the qualification of this juror.)

The jury being completed, duly empanneled and sworn, the plaintiff discontinues the suit in so far as it concerned F. Landfried, the co-defendant.

C. S. SAUVINET, plaintiff, sworn:

Q. Will you please state where you were born?

32 A. I was born in the city of New Orleans, in this city.

Q. What is your age?

A. 42 years.

Q. You have always resided here?

A. Always; with the exception of several years when I was traveling abroad.

Q. You are a registered voter?

A. I am.

Q. Of the parish of Orleans?

A. Yes.

Q. You have been elected sheriff at the last election by the people?

A. Yes.

Q. And you are now discharging the functions of this office?

A. Yes, I am.

Q. You have also been an alderman of the city of New Orleans?

A. I have.

Q. You served in the United States Army?

A. Yes; I held the rank of full captain and A. Q. M., United
33 States Army, commissioned by special act of Congress, signed by the President of the United States, and honorably discharged long after the war had ended.

Q. State what took place on the 20th of January, in the Bank saloon on Royal street.

A. On the 20th of Japuary last, 1871, two gentlemen came into my office of the civil sheriff of the parish of Orleans, and after some conversation with me, as I was about going up town, we went up together. These gentlemen were Mr. Finnegan and Mr. Conklin and Mr. Lynne,

here present. We started from the office and went up the street. Mr. Finne'an invited the crowd about us, three or four persons, to take a drink. Mr. Lynne, here present, was going to the State auditor's
34 office; left us at the corner of Conti and Royal streets. Mr. Finnegan, Mr. Conklin, and myself proceeded up the street; when we got to the corner of Bienville and Royal, as Mr. Finne'an had invited me to take a drink with him, I asked him to go to a certain bar-room where I have, more or less, been in the habit of going, at the corner of Exchange alley and Bienville streets. He objected to it for this reason, because in the French part of the city there were not good liquors. When we passed by the Sasarac I asked him to go in there, but he said "No, let us go to the 'Bank,' and we will have better liquors." I had certainly no objection to going to the "Bank" more than to any other place; and, as I was invited, of course I followed him, and I was refused a drink.

35 Q. Were those two other gentlemen with you also refused drinks?

A. The other two gentlemen with me, one of whom had invited me to take a drink, were not given a drink.

Q. Who were they?

A. Mr. Finnegan and—I must refer to my memorandum-book to give the initials—W. H. Finnegan and H. T. Conklin.

Q. You say you were refused a drink?

A. I was refused a drink.

Q. Did you ask the waiter there to serve you?

A. I asked the bar-keeper, as any man going into a bar-room.

Q. Did you not ask the waiter the reason for his refusal to serve you?

A. When I went in with those two gentlemen I went, of course, straight to the bar, and I saw, or thought I saw, a disposition in
36 the bar-keeper not to attend to me. When by his acts I became convinced that he had a motive, I called upon him to serve us and give us a drink, and he said he could not. I asked him the reason, and he said "Never mind, it is all right." Says I, "Sir, why do you not give me a drink?" He said, "Never mind, it is all right." I asked him several questions, and he never would answer any one of them, but all his answers were, "Never mind, it is all right" always. One of the two gentlemen with me, Mr. Conklin, wanted to know exactly why, and, as I did not wish in my position to raise what is commonly called a fuss in a public bar-room full of people, I said to this gentleman, "Very well. I know why he refuses. It is because I am said to be a colored man."

37 Q. What did the waiter say?

A. Never anything but "Never mind, it is all right." That is all he ever said.

Q. Who keeps that place?

A. Mr. Walker, I understand, keeps it.

Q. Is the building in which the establishment is kept under seizure?

A. The sheriff has the collection in the case of Haggerty vs. Haggerty of the rental of the building in which the establishment is kept, and the sheriff collects the rent monthly.

Q. Had you occasion to go several times to collect the rent from Walker?

(Objected to as irrelevant. Objection overruled.)

A. Yes, sir.

Q. State what took place.

A. On or about the 14th of January, 1871, I had occasion, in my offi-

cial capacity as sheriff of the parish of Orleans, to go to Walker's
38 saloon, or the "Bank," as it is called, and, on making enquiry if Walker was there, I was desired to go up-stairs in his private office. I went up, I saw Walker, and we had a very friendly and agreeable interview. He settled up the rent with me, and after having settled up the rent, after having paid me the rent, he invited me to a glass of wine. I accepted of it, but, seeing that he was about taking a bottle of champagne—I am particular about this—I told him that I did not like champagne, and we took then together a drink of whiskey or cognac. Then Mr. Walker said, "I have a favor to ask of you." "Very well," I said, "if I can do it, I shall do it." Then he went on and said that he had been told that I was a colored man, and so on, and that my
39 coming to his house would injure him, and he asked me as a favor not to come to his bar—to his saloon. My answer was just this, that I had always drank in all houses, and that it was too late now for me to go back; that what he said to me would not make me or cause me to go oftener there that I used to do in his place; but that what he had just said would not cause me to go there less often than I had previously went to his place. We parted, seemingly not less friends, and I never thought for a moment that by accidentally going to his place I should have been refused a drink. That was all the conversation which passed between us.

Q. Were other persons in the house drinking at the time you went in?

40 A. It was about 12 o'clock, and there were a great many men there. It was lunch time, and the table was crowded 3 or 4 rows deep.

Q. Did you not discover others drinking? Were they not serving others?

A. At the very moment that I went in I do not know that there were any persons actually drinking at the bar.

Q. But that is a place where they assemble and drink?

A. Undoubtedly.

Q. You have been there before?

A. Times and times over, and I had even drank on special invitation of the proprietor at his own bar once, if not more.

Q. Previous to his saying that he understood you to be a colored man, and his requesting you not to come to his bar?

A. Yes.

41 Q. You had drank there previous to that?

A. Yes.

Q. These gentlemen with you, were they creating any disturbance or were you creating any?

A. We walked just as gentlemen walk into a bar-room to take a drink, and go out. Even after having been refused we did not create any disturbance; we avoided. The first time when the bar-keeper would not serve us I wanted to know why. He said "Never mind, that is all right," and that was all the answer he gave.

Q. He kept on refusing?

A. Yes, and not *he* only, but also refused the others.

Q. Where was Walker at that time?

A. I do not know.

Q. You did not see him in the house?

A. He may have been there.

Q. What is the name of this bar-keeper?

A. I do not know.

42 Q. Do you see him in the court here?
A. If I mistake not he is sitting over there.
Q. They have liquors, I suppose, there of every description?
A. It was a public bar-room, certainly.
Q. I suppose you had been in the habit of going to bar-rooms in the city before?
A. I have been in the habit of going to all the bar-rooms for the last 25 years.
Q. At different places in the city?
A. All places indiscrim'ately.
Q. Look at this blank license.
A. Yes.
Q. Where was this blank given to you?
(Counsel for defendant objects to any evidence in reference to this blank license as irrelevant. Admitted to prove that this is the general form of license; but not to prove that it was so issued in this particular case.)
43 Q. Where did you get that blank form?
A. From Mr. Chadwick, in the department, or from the department of finances in the city of New Orleans. It was given to me as the license issued.
(Objected to.)
Q. Is that the place from whence licenses emanate?
A. That is the place.

Plaintiff offers in evidence this blank-form of license marked A, now filed.
(Objected to by counsel for defendant.)

O. M. TENNISON,
D'y Clerk.

Document "A."—Blank form of license.

Filed March 16th, 1871.

O. M. TENNISON,
D'y Clerk.

City of New Orleans, license for the year 1871. Department of public accounts, No. , January 1, 1871.

44 The administrator of finance will receive from the sum of dollars for license to carry on the business of until December 3, 1871, subject to the provisions, of ordinance No. 571, administration series, and of the several acts of the legislature regulating licenses.

$

P. R. R. int. tax.

For Administrator of Public Accounts.

$

DEPARTMENT OF FINANCE,
New Orleans, , 1871.

I hereby certify that the above-named sum has been paid in this office.

For Administrator of Finance.

NOTE.—This license must be hung up in a conspicuous place in your office, under penalty of the fine imposed by sec. 75 of ordinance No. 571, administration series.

45 Revised statutes.

SECTION 458. All licenses hereafter granted by this State, and by all parishes and municipalities therein, to persons engaged in business or keeping places of public resort, shall contain the express condition that the place of business or public resort shall be open to the accommodation and patronage of all persons, without distinction or discrimination on account of race or color, and any person who shall violate the condition of such license shall, on conviction thereof, be punished by forfeiture of his license, and his place of business or of public resort shall be closed; and, moreover, he shall be liable, at the suit of the person aggrieved, to such damages as he shall sustain thereby, before any court of competent jurisdiction.

46 Mr. Walker has taken his license this year, with this endorsement on January 28th, 1871. 1st class coffee-house, $250. No. of license, 392.

Minutes. March 16th, 1871.

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER ET ALS. } No. 399.

This case, fixed for this day, for trial by jury, came on. Present, Hornor & Benedict & A. Attocha for defendant.

Present, E. Filleul, A. P. Field, for plaintiff.

After four peremptory challenges on the part of plaintiff to jurors regularly summoned, and two peremptory challenges on the part of defendant, the following-named persons were drawn from the panel of jurors summoned to try this case, were called to the book and sworn, to wit:

47

1. JOSEPH BLASKI.
2. D. A. BLANCHARD.
3. HENRY PARLOGUÉ.
4. HENRY HASSMAN.
5. PIERRE REYES.
6. JOSEPH PIGEAUX.
7. HONORE COFFY.
8. HENRY WEBER, S'R.
9. PATRICK GRADY.
10. EDW. VORSTER.

The panel of jurors summoned being exhausted, and the jury to try this case not yet complete,

The court ordered that talismen, having the requisite legal qualifications to act as jurors, be summoned from among the persons present, which being done, and after two peremptory challenges on the part of

the defendants, the following-named talismen were called to the book and sworn in to try this case, to wit:

Mr. M. Feeny and John Longmiere.

The jury being complete, the court appointed John Longmiere foreman, and the trial of the case was proceeded with.

48 When, after hearing pleading and testimony, this case was ordered to be continued to to-morrow, at 11 o'clock a. m., and that the jurors empanelled to try this case were discharged till that day and hour.

The other jurors in attendance were finally discharged.

Testimony. Filed March 17th, 1871.

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER ET ALS. } No. 399.

Index.

C. S. Sauvinet.....
Blanks A, B, & C .....
W. H. Finnegan.....
Pat. Creagh.....
Aug. De Blanc.....
P. V. McCarthy.....
Edmond Campanel.....
P. Creagh, recalled.....

C. S. SAUVINET recalled:

49 The testimony of previous day being read over to the witness, witness says: "There is, I think, an error in regard to my asking more than one bar-keeper. I do not think I asked more than one."

Q. Where is that establishment located?

A. On Royal street, between Canal and Custom-house. It is called the "Bank" place.

Cross-examined:

Q. When you went into the bar-room and applied to the bar-keeper for a drink, you say that he answered that he could not give it to you?

A. He refused it.

Q. These gentlemen who were with you, were they refused too?

A. They were.

Q. Did they ask for it?

A. They did.

Q. What was their language?

A. They asked for a drink. We went in together. We went solely and for the simple purpose of taking a drink.

50 Q. You have detailed the conversation between yourself and the bar-keeper; now detail the conversation between Mr. Finnegan and the bar-keeper.

A. I could not, of course, remember the exact words. Of course it was a matter so strange to me, so entirely unexpected, that it threw me, I might say, off my guard. These two gentlemen—I had been invited

by one of them to take a drink, and not expecting for a moment that that simple thing would be refused. It put me, as you might expect, somewhat out of my ordinary state of mind, but, at the same time, I never lost for a single moment the respect that I was owing to myself in my official capacity. I knew that under the law I was to be protected. I knew that I had, as an officer of the law, to respect the law. Therefore I went out, and I prevented, through my coun-
51 sel, one of the other gentlemen from creating, as I said before, what might have been a fuss in the bar-room, and walked out.

Q. Then I understand you to say that you cannot remember the conversation between Finnegan and the bar-keeper?

A. Finnegan is here. We both went—three of us together. I was refused a drink. The others asked why, and the same answer was given to them as to me, and the same treatment offered them as was given to me.

Q. Do I understand you to say that you cannot remember the conversation between Finnegan and the bar-keeper?

A. I say that I cannot detail it.

Q. How does it happen that you are able to detail so accurately your own conversation, and cannot remember that of Finnegan with the bar-keeper?

52 A. Because it is a personal matter between him and me, and I acted as the principal in that.

Q. Do you remember the conversation your other friend and the bar-keeper?

A. As I said, I could not detail it.

Q. Are you a colored man?

(Objected to as irrelevant. Objection overruled, and counsel for plaintiff reserves a point for a bill of exceptions.)

A. Well, I will answer directly to your point. Whether I am or not is a matter that I do not know myself. But I am, and was legally, for this reason: That prior to the war, and before the Congress of the United States had passed laws granting and giving citizenship to men born on the soil, whether colored or not, you had always refused me, though born and raised here, the right to vote and to exercise the rights of citizenship.

53 Q. Was it not your habit, before the war, to go into different saloons and bar-rooms and drink as other white men did?

A. Yes, sir.

Q. These two gentlemen, Finnegan and Conklin, that were with you, are they white men?

A. They are said to be. I do not know.

Q. To all external appearances they are?

A. Yes, sir.

Re-examined:

Q. You say that previous to the war, and previous to this new state of things, the passage of the act of Congress and the amendment to the Constitution of the United States, you were denied the rights of suffrage?

A. Yes.

Q. On account of your race?

A. Yes, sir. I never enjoyed it.

Q. You were denied this right on account of your race?

(Objected to as leading.)

54 Q. You state you were denied this right of voting and exer-

cising the rights of citizenship because of the fact that you were supposed to be a person of color?

A. Yes; most particularly.

Q. Was not such the general reputation in the community that you were a person of color; and was not that the reason that you were excluded from the right of citizenship and holding office?

A. Yes; and even as late as the late election one of the leading newspapers of the city said that I was a negro. I can offer that in evidence.

Cross-examined:

Q. You say that before the war you were denied the right of suffrage, &c., on account of your being reputed to be a colored man?

A. Yes.

Q. Did you ever apply for that right?

55 A. I never did.

Q. Did you ever become a candidate, or attempt to become a candidate, for any office before the war?

A. No.

Q. Did you ever apply for any other rights of citizenship?

A. I never did.

Q. When you go among strangers are you not received as a white man?

A. I am received as a gentleman. I never enquired whether I was received one way or the other.

Q. Has it not been your custom to let it be generally known and understood that you are a white man?

(Objected to as irrelevant. Overruled.)

A. I should answer that I am very much astonished that I should be wanted to be proven a white man, when a few months ago I was called a negro.

56 Q. Answer the question.

A. I can only answer this way—no; because everybody knew that it was not.

Q. That what was not?

A. Just this: that I was not a white man, because I was refused all the rights inherent to that title; and how can a man be a white man and be refused that?

Q. He might have been a foreigner.

A. Then I am not; because everybody knows that I was born here.

Q. Have you never said that both your parents were white persons?

A. That both my parents were foreigners.

Q. Answer the question. Have you never said that both your parents were white persons?

A. I do not know.

Q. You do not know whether you have ever said that both your parents were white persons?

57 A. I do not know that I have ever said so. I stated, and I state again, that they were both foreigners, born outside of the limits of the United States.

Q. Have you not stated that you are as much a white man, and of white blood, as any man in the community?

A. I have so stated. Aint I?

Counsel for plaintiff calls for the production by the defendant of his license from the city and State, under the subpœna duces tecum. Be-

ing called upon to produce these licenses from the city and State, called for by the subpœna duces tecum, defendant admits that he has a similar license, as the blank form marked A, together with the endorsements printed on the back of this blank license, and also admits
58 that he made application to the city in the form marked B, and also that he has a similar State license to the blank license marked C, together with the endorsements printed on the back. Plaintiff offers in evidence these blank forms above referred to, marked A, B, and C respectively, now filed.

W. H. FINNEGAN sworn for plaintiff:

Q. Where do you live?

A. In New Orleans.

Q. Are you acquainted with Mr. Sauvinet, the plaintiff?

A. Yes.

Q. Will you state what took place on the 20th of January, when you went to the "Bank" saloon with Sauvinet?

A. I had occasion to call on Sauvinet that day, or on or about that day, to see him on some business connected with his office, and
59 this gentleman, Mr. Conklin, with me; also had business in connection with an injunction I had in court. I wanted Sauvinet to give it his early attention, and have the process served, and after talking with him a few minutes, we walked up Royal street. I believe Mr. Lynne was in company with us. We went up Royal street as far as Conti. I proposed that we should treat. I felt exhausted. Mr. Lynne excused himself, saying that he was going on business, in the auditor's office, I believe. He left us there. We proceeded along Royal street till we came to the "Bank." I suggested that the best place to get a drink would be in a first-class coffee-house. We went in. I came to the "Bank" with Conklin and Sauvinet, and after a
60 moment or two I addressed the bar-keeper there. He went towards the street window, and did not seem to pay any attention. I motioned to him that we wanted to be served. He shook his head and appeared to be excited. He was rather pale in the face, and looked excited. Conklin again asked him, or told him that we wanted a drink, and he shook his head and said. He did not use any words at the time, but he shook his head and did not seem to make any reply. We again asked, and he again said, "That is all right if you——." "It is all right if you——." I do not know exactly whether he said that we should have any drink or not; but his motions were such, so indifferent, that he did not seem to want to wait on us. After a moment or two he went around and seemed embarrassed. Sauvinet now
61 suggested that we had better go out. Conklin said to the bar-keeper, "What is the reason you would not serve us?" He said, "That is nothing, it is all right," or something of that kind, and looked upon it very indifferent, as if he did not care. I insisted upon having an understanding; but Sauvinet said, "No, we had better not," and took me towards the door. Conklin remained behind. In fact, I do not know what Conklin said, but it was that he wanted to have an explanation, and wanted to know why we were refused. I did not know the reason at the time, but Sauvinet suggested that we had better go out, and he said, "I know the reason why we were refused." He did not say then, I believe, exactly, that he was a colored man, but he was embarrassed, and we all felt much mortified. We then pro-
62 ceeded along up to St. Charles st., and I then did not know or understand the reason we were refused, but Sauvinet said that he

knew the reason, and we went on to Carondelet street, and there he said that the reason was that he was reported to be a colored man, and Walker had told him before in some business transaction——

(Counsel for defendant objects to witness testifying to anything which Sauvinet said about his conversation to Walker.)

Q. Told him what?

A. Before he gave me to understand the cause of the refusal he said that in some business transaction with Walker he had invited him to his room and said to him, "If you go to my room, it is all right, but if you go to my bar-room you do me an injury, because persons
63 say you are a colored man." Then the cause struck me at once. I did not know that Sauvinet was a colored man by his appearance. Before we went to Carondelet street, we went to Santini's, and, not knowing why he was refused, we wanted to know the reason, and then went on to Carondelet street, and at the corner there it was that Sauvinet gave the reason why he was refused, and he said that he had drank there often at the "Bank," but that Walker had said that he would do him a favor by not coming there, because people said he was a colored man, or something of that kind.

Q. Had you ever been in that establishment before to drink?

A. Yes, sir; several times.

Q. They knew you there?

A. I have been several times during the winter, and have often
64 had drinks there. It is considered a first-class house.

Q. Do they know you there?

A. Probably by appearance.

Q. You have drank there several times and never been refused before?

A. No, I was not refused.

Q. When Sauvinet, Conklin, and yourself went into the bar-room what was your conduct?

A. We went in quietly and went directly to the bar—there was a large crowd in there—and we called for drinks.

Q. They had liquors there and served them out to others?

A. The young man seemed to come to us, but went by towards the window, and did not seem to pay any attention to us, and on his return I asked for drinks. He was very pale and excited and shook his head. He did not use any language at all but shook his head when Sauvinet asked, "Let us have some drinks," and "Why do you not
65 serve us," or something of that kind, and the bar-keeper said, "Well, it is all right," and "It is all right." I thought it was just as much as to say that if we insisted upon it we would have trouble. Sauvinet took me by the arm and walked towards the door.

Q. You heard Sauvinet ask the bar-keeper for drinks?

A. Yes.

Q. And he shook his head?

A. I asked him for drinks and he shook his head to me, and afterwards Sauvinet asked him for drinks, or simply motioned to him, and he shook his head again and said, "That is all right," or "That will do." Then we went to the door, and Conklin remained and said, "What is the reason you refused us drinks?" I did not hear the reply. Sauvinet was anxious to go, and outside he said. "I know the reason why
66 he refused us." Conklin joined us, and we went towards St. Charles street. He did not explain the reason then. We went to Santini's, and from there we went along Common street. We went in Santini's first and took drinks. I believe I paid for them. Sauvinet then took

out his memorandum-book, and he asked my initials, and also Conklin's. We then went along to Carondelet street, and he explained the reason, and gave us a long history, describing the language in which Walker had notified him before, in some business transaction, that he would do him a favor by not coming to his saloon, as he was reported to be a colored man. I sympathised with Sauvinet and his motive, and did not want to exact from Sauvinet whether he was colored. He said "I am well known there, and it is on my account that we were refused."

67 Q. Santini's was a first-class coffee-house?

A. Yes.

Q. No objection was made there to his drinking?

A. No; the clerk waited on us.

Q. Sauvinet drank there?

A. Yes.

Q. Where is Conklin?

A. He resides, I believe, on Polymnia street. I do not know whether he is there now. I have not seen him for a week or ten days.

Q. Was the attention of the people in the bar-room attracted to the fact that the bar-keeper had refused you drinks?

A. No, not much so, because we were quiet, and Sauvinet seemed to be embarrassed, and did not want to have a row.

Q. You say that you felt mortified, and Sauvinet seemed to be very much so?

A. Yes, he seemed troubled, and seemed to be very much excited.

68 Q. What did Sauvinet say when you withdrew from the "Bank" saloon?

A. Sauvinet took me by the arm and said, "I know the reason," but he did not say then what was the reason.

PATRICK CREAGH sworn for plaintiff.

Q. You received the subpœna for Conklin?

A. Yes.

Q. State whether you have been able to serve it.

A. I served it at the residence where he had been stopping. The name of W. W. McGarritty is on the door, number 34 Polymnia st. About a month ago, when this trial first began, I found Conklin in that house, and I served him personally. This time I went with the subpœna there and I saw a colored woman coming out, and Mr. McGarritty

69 was taking dinner. I do not know whether Conklin was in. I have sent three attachments after him.

Q. You have made dilligent enquiry after him?

A. Yes.

Q. And used all dilligence necessary to find him, and have not succeeded?

A. Yes, I have, and I have not succeeded.

AUGUST DE BLANC sworn for plaintiff.

Q. How old are you?

A. Sixty, and over.

Q. You were born in the States?

A. Yes, sir.

Q. You have always resided in Louisiana?

A. Yes, sir; part of the time in New Orleans, and a part of the time in St. John the Baptist.
Q. Were you born in St. John the Baptist?
A. No; in the city of New Orleans.
Q. You are accquainted with Sauvinet?
A. Yes, sir.
70 Q. For many years, I suppose?
A. Fifteen years, I suppose.
Q. What reputation has he as regards color?
(Objected to.)
(Objection overruled, and the point reserved by counsel for defendant for a bill of exception.)
A. Well, sir, he has passed always for a colored man.
Q. He has that general reputation?
A. Yes, sir.

P. V. McCARTHEY sworn for plaintiff.
Q. How old are you?
A. Sixty-one years.
Q. Were you born in this city?
A. Yes, sir.
Q. Have you always resided here?
A. Yes, it has always been my domicile, since I was born; but I have absented myself, and been gone to Europe.
Q. Do you know Sauvinet?
A. Yes.
71 Q. How long have you known him?
A. More than twenty-five years; since he was a child.
Q. What is his general reputation in the community, as regards color?
A. I never heard anybody say whether he was white or colored.
Q. What is his reputation in the community; does he pass for a man of color?
A. I think Sauvinet was very much embarrassed to tell his origin, as a great many other people. Some people might take him as a white man, and others as a colored man.

EDMOND CAMPANEL sworn for plaintiff:
Q. Were you born in the city?
A. Yes.
Q. And reside in New Orleans?
A. Yes.
Q. How old are you?
A. Fifty-five years.
Q. Do you know Sauvinet?
72 A. Yes.
Q. What is his general reputation in the community? Is he considered a white or colored man?
A. He has the reputation of being a colored man.
Q. How long have you known him?
A. Since his childhood.

PATRICK CREAGH recalled for plaintiff:
Q. Do you know Sauvinet?
A. A good many years; yes.

Q. State what reputation he has in regard to color, whether as a white or colored man?

A. Before the war I thought he was a white man. I never heard before the war that he was a colored man.

Q. How long have you heard that he was a colored man?

A. Since the war, but not before that.

Q. Was he regarded before the last election as a colored
73 man?

A. Yes.

Q. The public papers and everybody knew it?

A. Yes, all regarded him as a colored man before the last election.

Q. Before the war you had not heard anything about it?

A. Not anything in regard to his being a man of color. I saw him associating all the time with white men.

Q. At the last election, or previous to the election, he was regarded as a colored man?

A. Yes, as a colored man.

Q. When Sauvinet was elected sheriff, and nominated, did not all the community know he was a colored man?

A. He got nominated as such; that I know. He got nominated as a colored man. All the community regarded him as such, and the convention that nominated him regarded him as a colored man.

74 Cross-examined:

Q. Who nominated Sauvinet?

A. The republican convention—the parish convention.

Q. They, you say, nominated him as a colored man?

A. I think so; yes.

Q. Are you able to state whether his seeking to obtain the nomination as a colored man was, or not, a dodge to obtain the nomination?

A. I do not know.

Q. You do not know whether that was not a dodge to induce people to vote for him?

A. I do not know that——

Plaintiff closes.

Defendant offers no testimony.

DOCUMENT "B."

Coffee-house license in blank.

Filed March 17th, 1871.

O. W. TENNISON, *D'y Clerk.*

Mayoralty of New Orleans. Coffee-house and beer-house license, for the year 1870.

75 No. No. street.

Mr. having furnished the security required by law, is hereby permitted to retail spirituous liquors until December 31, 1871. He shall conform to all the city ordinances relative to coffee-houses, &c., and shall pay for this license to the city treasurer, in advance.

Given at the city-hall of New Orleans, , one thousand eight hundred & seventy.

CITY OF NEW ORLEANS,
Treasurer's Office, 1870.

No.]
Received from dollars. The tax on the above license for the year 1870.
$

Treasurer.

P. R. R.

Controller.

DOCUMENT "C."

State license in blank.

Filed March 17th, 1871.
76 O. W. TENNISON, *D'y Clerk.*

Seventy-five dollars license.

STATE OF LOUISIANA,
Auditor's office:

Having paid seventy-five dollars to the State of Louisiana, is hereby licensed to pursue and follow the occupation of for the year ending December 31st, one thousand eight hundred and seventy-one.

Auditor.

Received payment this day of , 1871.
No.

Collector.

Act 38—*approved February* 23*rd*, 1869.

SEC. 3. That all licenses hereafter granted by this State, and by all parishes and municipalities therein, to persons engaged in business, or keeping places of public resort, shall contain the express condi-
77 tion that the place of business or public resort shall be open to the accommodation and patronage of all persons, without distinction or discrimination on account of race or color, and any person who shall violate the condition of such license shall, on conviction thereof, be punished by forfeiture of his license, and his place of business or public resort shall be closed, and, moreover, shall be liable at the suit of the person aggrieved to such damages as he shall sustain thereby, before any court of competent jurisdiction.

SEC. 4. That for violation of any of the provisions of the first and second sections of this act, the party injured shall have a right of action to recover any damage, exemplary, as well as actual, which he may sustain, before any court of competent jurisdiction.

78 All coffee-houses, bar-rooms, grog-shops, or cabarets, shall be divided into the following classes, and shall pay the licenses affixed respectively thereto, viz:

THIRD CLASS.—Those whose sales are less than five thousand dollars, seventy-five dollars per annum.

All retail groceries selling liquors by the glass shall pay, in addition to the grocery license, the third-class coffee-house license.

Each partner of any firm doing business in this State, in any line of

occupation, whether resident or non-resident, active or silent, shall pay a license as herein prescribed.

Each and every person having more than one store or other establishment or place of business, or following more than one trade or profession, shall pay the license upon each separately.

79 *Submitted minutes, March 17th.*

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

This case, continued to this day for trial by jury, came on.

Present, E. Filleul & A. B. Field for pl'ff; Hornor, Benedict & Attocha for defendant.

The roll of the jury empanelled to try this case having been called, and each juror being present, the trial of the case was proceeded with.

After hearing further testimony and argument of counsel, the jury received the charge of the court and retired to deliberate.

After deliberation they returned into court, and through their foreman informed the court that they could not agree upon a verdict in this case.

80 Whereupon, in conformity with act No. 23, of the session of the legislature of the year 1871, the court took this case under advisement and ordered that counsel furnish briefs within ten days.

Act No. 23.

Filed March 18th, 1871.

J. D. TAYLOR, *D'y Clerk.*

An act to regulate the mode of trying cases arising under the provisions of article thirteen (13) of the constitution of Louisiana, or under any acts of the legislature to enforce the said article thirteen of the said constitution, and to regulate the licenses therein mentioned.

SECTION I. *Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened,* That all cases brought for the purpose of vindicating, asserting, or maintaining the rights,

81 privileges, and immunities guaranteed to all persons under the provisions of the article thirteen of the constitution of Louisiana, or under the provisions of any acts of the legislature to enforce the said article thirteen, and to regulate the licenses therein mentioned, or for the purpose of recovering damages for the violation of said rights, privileges, and immunities, shall be tried by the court, or by a jury if any party to the suit prays for a trial by jury.

SECTION II. *Be it further enacted, &c.,* That if the jury do not agree or fail to render a verdict, either for the plaintiff or defendant, the jury shall be discharged, and the case shall be immediately submitted to the judge upon the pleadings and evidence already on file, as if the case had been originally tried without the intervention of a jury;

82 and it shall be the duty of the judge to decide the case at once, without any further proceedings, arguments, countenance, or de-

lay; each party having the right to appeal to the supreme court in all cases where an appeal is allowed by law.

SECTION III. *Be it further enacted*, And that this act shall take effect from and after its passage.

(Signed) G. W. CARTER,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant Gov. and President of the Senate.

Approved February 27th, 1871.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

OFFICE OF SECRETARY OF STATE,
STATE OF LOUISIANA,
New Orleans, March 16th, 1871.

This is to certify that the above and foregoing is a true and
83 exact copy from the original act on file in this office, and the interlineation in the 2nd line of the 1st section, between the words "representatives" and "in," was made before signing this.

Given under my hand and the seal of State this 16th day of March, 1871.

GEO. E. BOVEE,
Sec'y of State.

Bill of exceptions, No. 1, for defendant.—A. Attocha and Hornor & Benedict, att'ys.

Filed April 4th, 1871.

J. D. TAYLOR, *D'y Clerk.*

Eighth district court.

C. S. SAUVINET *vs.* J. A. WALKER. } No. 399.

Be it remembered that, on the trial of this case, in open court, on Thursday, the 16th day of March, 1871, the counsel for defendant made a challenge to the array of the jury for the reasons fully ex-
84 hibited and set forth in paper marked "Challenge No. 1," hereinbefore filed, and submitted the same upon the testimony already taken thereupon and in the record.

Whereupon the court overruled said challenge as being unfounded in law, after hearing evidence and argument, and proceeded to empanel the jury.

But the court overruled these objections and ordered the evidence to be received, when the counsel for defendant excepted to the said ruling of the court and tendered this bill of exceptions, praying the court to sign the same and make it a part of the record in this case.

(S'g'd) HENRY C. DIBBLE, *Judge.*

Bill of exceptions, No. 2, for defendant.—A. A. Attocha and Hornor and Benedict, att'ys.

Filed April 4th, 1871.

85 J. D. TAYLOR, *D'y Clerk.*

Eighth district court, parish of Orleans.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

Be it remembered that, on the trial of this case, in open court, on Thursday, the 16th day of March, 1871, the names of the jurors having been called, and including one Louis Kenzel, having been placed in the box and been drawn out by the clerk, and a list formed as required by arts. 496 et seq. of the Code of Practice, when said Louis Kenzel was called to the book and presented as a juror to the pl'ff. Whereupon said Kenzel asked to be excused from service as a juror, on the ground that he was exempt as a fireman. To which the counsel of the defendant objected on the grounds following:

86 First. That the application to be excused came too late, and should have been made before the name of the juror was put into the box.

But the court overruled these objections, and ordered the evidence to be received, when the counsel for defendant excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same and make it a part of the record in this case, after due exhibition to counsel for plaintiff. 3, 16–71.

(S'g'd) HENRY C. DIBBLE, *Judge.*
E. FILLEUL.

Bill of exceptions, No. 3, for defendant.—A. A. Attocha and Hornor and Benedict, atty's.

Filed April 4th, 1871.

J. D. TAYLOR, *D'y Clerk.*

Eighth district court, parish of Orleans.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

87 Be it remembered that, on the trial of this case, in open court, on Thursday, the 16th day of March, 1871, the juror, Joseph Pijeux, having been presented, and it appearing that said juror was a colored man, counsel for defendant challenged said juror for cause, on the ground that he was interested and prejudiced in this case on account of his color.

But the court overruled these objections, and ordered the juror to be received, when the counsel for defendant excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same and make it a part of the record in this case, after due exhibition to counsel for plaintiff.

(S'g'd) HENRY C. DIBBLE, *Judge.*
3, 16–71.
No objection.

E. FILLEUL.

88 *Bill of exceptions, No. 5, for defendant.—A. A. Attocha and Hornor and Benedict, att'ys.*

Filed April 4th, 1871.

J. D. TAYLOR, *D'y Clerk.*

Eighth district court, parish of Orleans.

C. S. SAUVINET *vs.* J. A. WALKER. } No. 399.

Be it remembered that, on the trial of this case, in open court, on Thursday, the 16th day of March, 1871, the juror, Edward Vorster, having been presented to and accepted by both parties, refused to be sworn as a juror, and stated that he was an atheist, that he neither believed in any Supreme Being, or in a state of future rewards and punishments, when counsel for defendant objected to him as a juror, on the ground that he was incompetent, for the reasons as above stated by said
89 juror. But the court overruled the objection, and ordered the clerk to administer the usual affirmation, omitting the words "So help me God," which was accordingly done, and the juror took his seat in the jury-box, when the counsel for defendant excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same and make it a part of the record in this case, after due exh to counsel for plaintiff.

3, 16–71. HENRY C. DIBBLE, *Judge.*

No objection.

E. FILLEUL.

Bill of exceptions, No. 6, for defendant.—A. A. Attocha and Hornor and Benedict, att'ys.

Filed April 4th, 1871.

J. D. TAYLOR, *D'y Clerk.*

Eighth district court, parish of Orleans.

C. S. SAUVINET *vs.* J. A. WALKER. } No. 399.

90 Be it remembered that, on the trial of this case, in open court, on Thursday, the 16th day of March, 1871, the counsel for plaintiff offered to prove, by C. S. Sauvinet, the plaintiff, then on the witness stand, a conversation which took place some days previous to the occurrence complained of in pl'ff's petition, to which the counsel of defendant objected, on the grounds following:

First. That the same was irrelevant, and not in any manner connected with the subject-matter of this suit.

Second. That there were no proper allegations in the pl'ff's petition to warrant the introduction of such testimony.

But the court overruled these objections, and ordered the evidence to be received, when the counsel for the defendant excepted to the
91 said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same and make it a part of the record in this case, after due exhibition to plaintiff's counsel.

3, 16–71. HENRY C. DIBBLE, *Judge.*

No objection.

FILLEUL.

Bill of exceptions, No. 7, for def't.—A. A. Attocha and Hornor and Benedict, att'ys.

Filed April 4th, 1871.

J. D. TAYLOR, *D'y Clerk.*

Eighth district court, parish of Orleans.

C. S. SAUVINET
vs. } No. 399.
J. A. WALKER.

Be it remembered that, on the trial of this case, in open court, on Thursday, the 16th day of March, 1871, the counsel for plaintiff offered in evidence a blank city license, and offered to prove by the pl'ff, then a witness on the stand, that it was such a license as all coffee-
92 house keepers in the city were obliged to have; to which the counsel for defendant objected, on the grounds following:

First. That it was irrelevant, the question not being before the court as to all coffee-houses, but only to that of def't, and therefore—

Second. That it was not the best evidence.

But the court overruled the objections, and ordered the evidence to be received; when the counsel for defendant excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same and make it a part of the record in this case, after due exhibition to plaintiff's counsel.

3, 16–71. HENRY C. DIBBLE, *Judge.*

E. FILLEUL, *Att'y.*

93 *Bill of exceptions, No. 8, for def't.—A. A. Attocha and Hornor and Benedict, att'ys.*

Filed April 4th, 1871.

J. D. TAYLOR,
D'y Clerk.

Eighth district court, parish of Orleans.

C. S. SAUVINET
vs. } No. 399.
J. A. WALKER.

Be it remembered that, on the trial of this case, in open court, on Friday, the 17th day of March, 1871, the court, in its charge to the jury, instructed them "that they were the judges whether laws are to apply to facts, and had no power to determine what the law is;" and further, that Act No. 38, of 1869, was constitutional and binding; to which the counsel of defendant objected on the grounds following:

First. That said charges were incorrect and illegal.

Second. That the constitutionality of said act was a fact
94 directly put at issue before the jury, which was for them to determine.

Third. That the court should have charged the jury that they were absolutely judges of the law, as well as of the fact.

But the court overruled these objections, when the counsel for defend-

ant excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same and make it a part of the record in this case, after due exhibition to counsel for plaintiff.

3, 20–71.

HENRY C. DIBBLE, *Judge.*

E. FILLEUL, *Att'y.*

Bill of exceptions, No. 9, for def't.—A. A. Attocha and Hornor and Benedict, att'ys.

Filed April 4th, 1871.

J. D. TAYLOR,
D'y Clerk.

95 Eighth district court, parish of Orleans.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

Be it remembered, that on the trial of this case in open court, on Friday, the 17th day of March, 1871, the counsel for defendant asked the court to charge the jury that "under the allegations of the petition the jury must find that plaintiff is a man of color or he cannot recover;" which charge the court declined to give, on the grounds following:

First. That it was a question of fact, and should be left to the jury, without instructions.

When the counsel for defendant excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same and make it a part of the record in this case, after due exhibition to counsel for plaintiff.

3, 20–71.

HENRY C. DIBBLE, *Judge.*

E. FILLEUL, *Att'ys.*

96 *Reasons for judgment.*

Filed April 27th, 1871.

J. D. TAYLOR,
D'y Clerk.

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

This suit for damages was instituted by the plaintiff for the purpose of vindicating his civil rights guaranteed by Article 13 of the constitution, and sanctioned by the law approved February 23rd, 1869, entitled "An act to enforce the thirteenth article of the constitution of this State, and to regulate the licenses mentioned in said thirteenth article."

The defendant in his answer prayed for a trial by jury.

A special jury was empaneled, and on the seventeenth of March, 1871, the case was submitted to them. They failed to agree and were discharged.

97 Thereupon the plaintiff's counsel moved that the court should at once proceed to decide the case in compliance with section two of an act approved February 27th, 1871, entitled "An act to regulate the mode of trying cases arising under the provisions of article thirteen of the constitution of Louisiana, or under any acts of the legislature, to enforce the said article thirteen of the constitution, and to regulate the licenses therein mentioned."

To this motion the defendant's counsel objected, saying that the law is unconstitutional.

The fact of the mistrial was ordered to be entered upon the minutes. The case was taken under advisement, and time was granted for the attorneys to file briefs upon the question of the validity of the last-named act.

That act provides that all cases brought for the purpose of vin-
98 dicating, asserting, or maintaining the rights, privileges, and immunities guaranteed to all persons under the provisions of the article thirteen, or of acts to enforce the same, shall be tried by the court, or a jury, if any party to the suit prays for a jury trial. It then provides that the court shall determine the cause in case of mistrial, as aforesaid.

Several objections are urged to the validity of this statute, which must now be passed upon:

1st. It is insisted that its provisions should have no application to this case, because it was not promulgated until the seventeenth of March, the day after the trial commenced; that quo ad this suit it is retroactive and violates Article 110 of the constitution.

But the law was approved February 27th, and was to take effect from its passage

It was a law on that date, though not promulgated.

99 2 An., 68; 13 An., 502; 14 An., 486.

It was, therefore, not retroactive as regards this case, for when the trial occurred the statute was in full force. It relates alone to the trial.

2. It is urged that at the time the present constitution was framed the right of trial by jury in such cases was not denied, and that such right is, therefore, expressly reserved by the terms of article fourteen, which declares that "the rights enumerated in this title shall not be construed to limit or abridge other rights of the people not herein expressed."

If it were a fact that a constitutional right of trial by jury in civil cases existed at the time of the adoption of the constitution of 1868, it would be necessary to examine the scope of this article fourteen of the bill of rights; but such is not the case. It has been settled by
100 numerous decisions that the right of jury trial in civil cases, guaranteed by the seventh amendment to the Constitution of the United States, only has reference to proceedings in the Federal courts, and has no application to the State tribunals; 5 M., 436. Indeed, it is not now urged that the law violates the Constitution of the United States in that respect.

The several constitutions of Louisiana have guaranteed the right of jury trial in criminal prosecutions, but have left to the legislature the power of determining in what civil cases such trials shall be had. 1 An., 418; 3 An., 197; 3 R., 123. The whole judicial frame-work is based upon such denial, for the Supreme Court is empowered to review questions of fact which have been decided by juries, contrary to the common-law doctrine. The present constitution expressly denies the right of

jury trial in all cases which may come before the parish court, article eighty-seven. Therefore, as the right of jury trial in such a case as this, prior to the adoption of the constitution, depended upon legislative will, it does not seem that article fourteen is violated.

3. Counsel insist that the first section of this statute guarantees the right of jury trial; that there has been no trial, but a mistrial, and therefore the second section, directing the court to decide the case when the jury does not agree, is destroyed. The several provisions of statutes are construed together.

4. And finally it is said that this act is mischievous in its tendency, and subversive of the republican form of government. If the law is not unconstitutional the courts have nothing to do with its tendency; it may be a good or a bad law; the judges who administer it are not responsible.

The act does not violate any provision of the Constitution of the United States, or of our own State. It is true that it is an infringement of the right of a person who has been sued to have his case determined by his peers, but it does not seem at all clear that any wrong has been committed. The ultimate power, in this State, of deciding all questions of fact and law in civil cases, is not with the jury, but with the judges. Litigation must not continue forever. The law was evidently formed for the purpose of ending these suits which could not otherwise be concluded.

Juries could not be obtained who would agree one way or the other. Therefore, there seems to be considerable strength in the argument of plaintiff's counsel, who argues that the legislature was bound to pass some such law to meet the exigency.

Article ten of the constitution declares that the courts shall remain open, and every person, for injury done him, &c., shall have adequate remedy by due process of law, and justice administered without denial or unreasonable delay.

The remedies which existed before this act was passed only afforded to the person who sought to maintain the rights guaranteed to him by article thirteen the prospect of an interminable suit; afforded means to plaintiff and defendant of preventing the cause from going before the judges who have the final authority to decide. Such remedies did not meet the requirements of the bill of rights. They were not adequate, did not afford the means for the administration of justice without unreasonable delay. I proceed, then, to consider the case upon its merits. Article thirteen of the constitution is as follows:

"All persons shall enjoy equal rights and privileges upon any conveyance of a public character; and all places of business or of public resort, or for which a license is required by either State, parish, or municipal authority, shall be deemed places of a public character, and shall be opened to the accommodation and patronage of all persons, without distinction or discrimination on account of race or color."

The statute of 1869, aforesaid, which was passed for the purpose of enforcing this article, provides that common carriers shall have the right to refuse to admit persons who are of infamous character, or who may be guilty of vulgar or disorderly conduct, or of acts tending to injure the business of such carrier, provided that the rules and regulations of such carriers shall not exclude any one on account of race or color. Otherwise, common carriers are forbidden to expel any one from, or refuse to admit any one to, their conveyance. The same rule is applied to public inns, hotels, and all places of public resort. The law further provides that all licenses granted by State,

parish, or municipal authority to persons engaged in the business of keeping places of public resort shall contain an express condition that the place of business or public resort shall be open to the accommodation of all persons, without distinction or discrimination on account of race or color. Any violation of these conditions renders the license liable to forfeiture, and the person aggrieved is authorized to sue for damages exemplary as well as actual.

The plaintiff, who is the sheriff of this parish, alleges that the
106 defendant, who keeps a coffee-house on Royal street, refused to supply him with refreshments because he is a colored man; that he, defendant, offered this indignity to him for no other reason.

He therefore claims exemplary damages in the sum of ten thousand dollars.

Another person was joined as defendant with Walker, but the suit was discontinued as to him.

The petition also prayed for the forfeiture of defendant's license, but that demand was abandoned on trial. The answer is a general denial. The evidence taken before the jury would hardly have been offered to the court had there been no jury. The arguments were effectively made to men disposed to disagree, and were certainly not intended for the court.

The facts proved are these: The plaintiff is reputed to be, and
107 is, a colored man. He entered the coffee-house of defendant in company with two other men, white men, and was refused a drink because he is reputed to be, and is, a colored man. While disputing the facts before the jury, the defendant's counsel argued that the article thirteen and the statute of 1869 aforesaid should be held void, as contravening the fourth and ninth amendments to the Constitution of the United States. In the charge to the jury they were instructed that it was not their province to declare constitutions and laws null, and they were charged that there is no conflict between the provisions of the National Constitution and our own. This charge was correct. The fourth amendment to the Constitution, declaring the right of the people
108 to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, was intended to prevent domiciliary visits and arbitrary arrests upon general warrants. (Story, sec. 1902.) The fourteenth amendment, declaring that the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people, rightly declares a rule of construction. (Story, section 1905.) The thirteenth article of the constitution of Louisiana, and the act to enforce the same, in no way conflict with these provisions of the Constitution of the nation. They are in full consonance, however, with the thirteenth, fourteenth, and fifteenth amendments to the national Constitution, abolishing slavery and extending to men of African descent, whether they have been slaves or not, the rights of citizenship in the republic, and in the States in which they reside.

I do not desire to discuss, and it is not my duty to consider,
109 the wisdom of the constitutional and statutory provisions under which the plaintiff brought this action. It is enough that I have sworn to obey them. Every citizen has the right to ask from courts that he be protected in the immunities and privileges guaranteed by the Constitution.

In this case, the plaintiff shows an infringement of such civil rights. His citizenship has been degraded. He should have exemplary damages. Such an amount should be estimated as would sanctify the princi-

ple involved, and deter others from inflicting the same injury. I think that one thousand will be sufficient.

It is, therefore, ordered, adjudged, and decreed that the plaintiff, C. S. Sauvinet, do have and recover from the defendant, J. A. Walker, the sum and amount of one thousand dollars as exemplary damages, and all costs of suit.

110 *Judgment.*

In this case, submitted to the court for determination, after deliberation, and for the reasons assigned in the written opinion this day delivered and filed, the court considering the law and the evidence to be in favor of the plaintiff;

It is ordered, adjudged, and decreed that the plaintiff, C. S. Sauvinet, do have and recover from the defendant, J. A. Walker, the sum and amount of one thousand dollars as exemplary damages, and all costs of suit.

Four (4) words erased approved before signing.

Judgment rendered April 27th, 1871.

May 8th, 1871.

(Signed) HENRY C. DIBBLE, *Judge.*

Rule for new trial.

Filed May 1st, 1871.

J. D. TAYLOR,
D'y Clerk.

111 Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

On motion of Hornor and Benedict and A. A. Attocha, of counsel for defendant, it is ordered that the plaintiff show cause on the 17th day of May, 1871, at 10 o'clock a. m., why a new trial should not be granted in this case on the exceptions taken at the trial and of the record, and on the following grounds:

1st. That the act under which this action is brought is null and void by reason of its being violative of the Constitution of the United States, and of the State of Louisiana.

2nd. That the plaintiff failed to make out his case, in not proving that he was a colored man; that he had been refused entertainment because he was a colored man, or that he suffered any actual damage.

112 3rd. That the judge erred in not taking upon himself to decide the case after the jury had failed to render a verdict, the act of , 1871, under which he undertakes to do so, being contradictory and inoperative, and not reconcilable with itself, or the laws in reference to a trial by jury.

4th. That the defendant was entitled to a rehearing before a jury.

5th. That this cause is one arising under a penal statute, which creates an offence and provides a punishment, and, therefore, under the constitution of the State, the defendant has a right of trial by jury, of which he cannot be deprived by act of the legislature.

6th. That by the fourteenth amendment of the Constitution of the United States certain inalienable rights are guaranteed to the de-
113 fendant which the laws of the State cannot deprive him of, among which is the trial by jury.

7th. That the judgment of the judge is contrary to law and evidence.

8th. That the damages awarded are excessive, and in all disproportion to the circumstances of the case or the condition of the defendant.

Rule for new trial.

Filed May 3rd, 1871.

ROBERT LYNNE,
D'y Clerk.

State of Louisiana, eighth district court for the parish of Orleans.

MONDAY, *the 1st day of May*, 1871.

Present: The Honorable Henry C. Dibble, judge.

C. S. SAUVINET
vs. } No. 399.
J. A. WALKER.

On motion of Hornor and Benedict, and A. A. Attocha, of counsel for defendant, it is ordered that the plaintiff show cause on the 7th
114 day of May, 1871, at 10 a. m., why a new trial should not be granted in this case on the exceptions taken at the trial and of record, and on the grounds herein filed in this office.

A true extract from the minutes.

J. D. TAYLOR,
D'y Clerk,

Sheriff's return.

Received May 1st, 1871, at 7 o'clock p. m., and service accepted.
(Signed) F. M. SICARD,
D'y Sheriff.

Rule discharged.—Minutes, May 8th, 1871.

Eighth district court.

C. S. SAUVINET
vs. } No. 399.
J. A. WALKER.

The rule for a new trial in this case came on. Present, Hornor and Benedict for pl'ff in rule; E. Filleul for pl'ff in suit and def't in rule.

After hearing pleadings, evidence, and counsel, the court con-
115 sidering the law and the evidence to be in favor of def't in rule, it is ordered that said rule be discharged and a new trial refused.

Motion and order of appeal.

Filed May 17th, 1871.

J. D. TAYLOR,
D'y Clerk.

Eighth district court.

C. S. SAUVINET
vs. } No. 399.
J. A. WALKER.

On motion of Hornor and Benedict, and A. A. Attocha, att'ys of defendant, and on suggesting to the court that defendant is informed and believes that there is error to his prejudice in the final judgment of the court herein rendered, and that he desires to take a suspensive appeal therefrom,

It is ordered by the court, that defendant be allowed a suspensive appeal, herein, returnable to the supreme court of Louisiana on the
116 first Monday of November, 1871, upon his giving bond with good and solvent security in the sum of eighteen hundred dollars, conditioned as the law directs.

Bond of appeal.

Filed May 17th, 1871.

J. D. TAYLOR,
D'y Clerk.

Eighth district court.

C. S. SAUVINET
vs. } No. 399.
J. A. WALKER.

Know all men by these presents, that we, Joseph A. Walker, as principal, and Charles Cavanac, W'm B. Schmidt, W'm Solomon, Hugh McCloskey, and Jno. H. Rareshide, in solido as sureties, are held and firmly bound unto Thomas Lynne, clerk of the eighth district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of eighteen hundred dollars; for the payment whereof,
117 we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seal and dated in the city of New Orleans, on the 16th day of May, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas the above-mentioned Joseph A. Walker has on this day filed a motion of appeal from a final judgment rendered against him in the suit of C. S. Sauvinet vs. J. A. Walker et als., No. 399, in the eighth district court for the parish of Orleans, on the 27th day of April, 1871, and signed on the 8th day of May, 1871:

Now, the condition of the above obligation is such, that the above bound Joseph A. Walker shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the
118 same shall be satisfied by the proceeds of the sale of his estate,

real or personal, if he be cast in the appeal; otherwise, that the said sureties shall be liable in his place.

J. A. WALKER, [SEAL.]
CHARLES CAVANAC, [SEAL.]
W. B. SCHMIDT.
WM SOLOMON.
HUGH McCLOSKEY.
J. H. RARESHIDE.

Signed, sealed, and delivered in the presence of—

Clerk's certificate.

I, Thomas Lynne, clerk of the eighth district court for the parish of Orleans, and as such duly commissioned and sworn, do hereby certify that the foregoing one hundred and twenty-five pages contain a true and correct transcript of all the proceedings had, all the documents filed, as well as all the testimony and evidence adduced upon the trial of the cause wherein C. S. Sauvinet is plaintiff and J. A. Walker and F. Landfried are defendants, the same being numbered three hundred and ninety-nine on the docket of the eighth district court for the parish of Orleans.

119

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of the said court in the city of New Orleans, this thirty-first day of August, in the year of our Lord one thousand eight hundred and seventy-one, and the ninety-sixth year of the Independence of the United States.

[SEAL.] (Signed) THOMAS LYNNE, *Clerk.*

120 Supreme court of the State of Louisiana.

Answer to appeal.—Filed Nov. 6, 1871.

State of Louisiana, supreme court.

C. S. SAUVINET *vs.* J. A. WALKER. } No. 3513.

The appellee, answering this appeal, thinks that he has sustained wrong by the judgment of the district court, in this, to wit, that the damages allowed him are insufficient and inadequate.

That the whole amount of the damages claimed by him, to wit, ten thousand dollars, should have been allowed.

He therefore prays that the judgment of the district court be amended, and that ten thousand dollars be allowed him.

121 And appellee also prays for general relief.

(Signed) E. FILLEUL,
Of Counsel.

Order to place on summary docket.—Filed Nov. 6th, 1871.

In the supreme court.

C. S. SAUVINET *vs.* J. A. WALKER. } No. 3513.

This case arising under the legislation for enforcing the constitutional

Motion and order of appeal.

Filed May 17th, 1871.

J. D. TAYLOR,
D'y Clerk.

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

On motion of Hornor and Benedict, and A. A. Attocha, att'ys of defendant, and on suggesting to the court that defendant is informed and believes that there is error to his prejudice in the final judgment of the court herein rendered, and that he desires to take a suspensive appeal therefrom,

It is ordered by the court, that defendant be allowed a suspensive appeal, herein, returnable to the supreme court of Louisiana on the
116 first Monday of November, 1871, upon his giving bond with good and solvent security in the sum of eighteen hundred dollars, conditioned as the law directs.

Bond of appeal.

Filed May 17th, 1871.

J. D. TAYLOR,
D'y Clerk.

Eighth district court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 399.

Know all men by these presents, that we, Joseph A. Walker, as principal, and Charles Cavanac, W'm B. Schmidt, W'm Solomon, Hugh McCloskey, and Jno. H. Rareshide, in solido as sureties, are held and firmly bound unto Thomas Lynne, clerk of the eighth district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of eighteen hundred dollars; for the payment whereof,
117 we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seal and dated in the city of New Orleans, on the 16th day of May, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas the above-mentioned Joseph A. Walker has on this day filed a motion of appeal from a final judgment rendered against him in the suit of C. S. Sauvinet vs. J. A. Walker et als., No. 399, in the eighth district court for the parish of Orleans, on the 27th day of April, 1871, and signed on the 8th day of May, 1871:

Now, the condition of the above obligation is such, that the above bound Joseph A. Walker shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the
118 same shall be satisfied by the proceeds of the sale of his estate,

real or personal, if he be cast in the appeal; otherwise, that the said sureties shall be liable in his place.

J. A. WALKER, [SEAL.]
CHARLES CAVANAC, [SEAL.]
W. B. SCHMIDT.
WM SOLOMON.
HUGH McCLOSKEY.
J. H. RARESHIDE.

Signed, sealed, and delivered in the presence of—

Clerk's certificate.

I, Thomas Lynne, clerk of the eighth district court for the parish of Orleans, and as such duly commissioned and sworn, do hereby certify that the foregoing one hundred and twenty-five pages contain a true and correct transcript of all the proceedings had, all the documents filed, as well as all the testimony and evidence adduced upon the trial of the cause wherein C. S. Sauvinet is plaintiff and J. A. Walker and F. Landfried are defendants, the same being numbered three hundred and ninety-nine on the docket of the eighth district court for the parish of Orleans.

119

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of the said court in the city of New Orleans, this thirty-first day of August, in the year of our Lord one thousand eight hundred and seventy-one, and the ninety-sixth year of the Independence of the United States.

[SEAL.] (Signed) THOMAS LYNNE, *Clerk.*

120 Supreme court of the State of Louisiana.

Answer to appeal.—Filed Nov. 6, 1871.

State of Louisiana, supreme court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 3513.

The appellee, answering this appeal, thinks that he has sustained wrong by the judgment of the district court, in this, to wit, that the damages allowed him are insufficient and inadequate.

That the whole amount of the damages claimed by him, to wit, ten thousand dollars, should have been allowed.

He therefore prays that the judgment of the district court be amended, and that ten thousand dollars be allowed him.

121 And appellee also prays for general relief.

(Signed) E. FILLEUL,
Of Counsel.

Order to place on summary docket.—Filed Nov. 6th, 1871.

In the supreme court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 3513.

This case arising under the legislation for enforcing the constitutional

privileges of art. 13 of the constitution of Louisiana, is entitled to be placed on the preference docket.

(Signed) E. FILLEUL,
Att'y for C. S. Sauvinet.

Case submitted.—Extract from the minutes.

WEDNESDAY, *December 6th*, 1871.

The court was duly opened. Present their honors John T.
122 Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

C. S. SAUVINET
vs.
J. A. WALKER ET ALS. } No. 3513.

This case was called for trial, and having listened to argument from E. Filleul, esq., of counsel for the plaintiff & appellee, and Joseph P. Hornor, esq., of counsel for the defendant, appellant herein, the court took the same under advisement upon the brief for appellee and the papers now on file, and the brief to be filed on behalf of appellant by counsel within ten days from this date.

Opinion.

Filed March 11, 1872.
(Signed) M. P. JULIAN,
Dep'y Clerk.

123 Supreme court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 3513.

Appeal from the eighth district court for the parish of Orleans.

Mr. Justice TALIAFERRO:

This is an action brought under the 4th section of the act of the legislature, approved 24th of February, 1869, entitled "An act to provide for carrying into effect the one hundred and thirty-second article of the constitution of the State."

The plaintiff alleges that on the 20th of January, 1871, in company with two of his friends, he called at the coffee-house of the defendant, and asked of the person in attendance to be furnished with refreshments, kept and sold there by the defendant, a duly licensed coffee-house keeper. That he offered to pay the usual and customary
124 price of such refreshments, and conducted himself in an orderly and respectful manner. That notwithstanding, the accommodations asked for were refused, and that he was ordered to leave the house. That this refusal and ill-treatment arose from no other cause or reason than that the petitioner is a man of color, and on that account not to be furnished with the accommodations extended in that establishment to others. The plaintiff avers that from the indignity so wantonly offered to him his feelings have been greatly outraged, and

for this illegal and unwarranted act of the defendant the plaintiff prays damages in the sum of ten thousand dollars.

The answer is a general denial. The case was tried before a jury, but there was a disagreement and no verdict rendered. The court there-
125 upon, under the provisions of act No. 23 of the statutes of 1871, rendered a judgment for one thousand dollars in favor of the plaintiff, and the defendant appealed. There are numerous bills of exceptions found in the record, but their examination is not important in determining this case. Six of them relate to the formation of and the judge's charge to the jury; the other two relate to the admission of testimony, and are not important.

There was no evidence introduced on the part of the defendant.

All the material allegations of the plaintiff we consider are fully established. The plaintiff is shewn to be a man of character and respectability; that he has frequently held public office, and that he is now, and was at the time he was refused refreshments in the defendant's
126 coffee-house or saloon, civil sheriff of the parish of Orleans. It is clear that the refusal of the accommodations asked for was made solely on the ground that the plaintiff is a man of color. The defendant has, therefore, incured the penalty of the act of 1869. We think the judgment of the lower court correct.

It is therefore ordered, adjudged, and decreed that the judgment of the district court be affirmed, with costs.

SAUVINET
vs.
WALKER.

WYLY, J., dissenting:

I think the plaintiff had the right to be served at the bar-room of the defendant; but I do not think the refusal ought to entitle him, a colored man, to greater damages than a white man ought to recover; it being no greater wrong to refuse a colored man than a white man.

127 The question of color has nothing to do with the case; nor is the position of the plaintiff of any consequence.

A citizen of the State has been refused entertainment at a public resort, and he claims exemplary damages under a statute highly penal in its character.

The jury could not agree upon a verdict, and under a special statute the district judge was authorized to dispose of the case. He imposed on the defendant $1,000.00 exemplary damages, no actual damages being shown.

I think the penalty wholly disproportionate to the offence.

If instead of refusing the plaintiff a drink merely, the defendant had seized a chair and beaten him half to death with it, the damages would probably not have exceeded $250.00; yet is the right to enjoy
128 the entertainment of a drinking-saloon of greater moment or more sacred than the right of personal security from violence?

Grave offenders are rarely condemned to pay a larger penalty than $1,000.00, as the law is now administered; and yet, without any evidence of the ability of the defendant to pay the penalty, he is condemned to pay one thousand dollars for merely refusing to sell a drink, not probably worth twenty-five cents, and where no actual damage has resulted from the refusal.

As the statute is highly penal, as there is no proof of the circumstances of the defendant, and as the damages imposed by the district judge are

in my opinion unreasonable and oppressive, I believe justice requires that this case should be remanded for new trial by a jury.

129 To vindicate Mr. Sauvinet's civil rights it is not necessary to despoil the defendant or to impose on him a greater penalty than he can bear, the object of the law being to correct the abuse, not to bestow wealth upon the party injured or to destroy the offender.

For these reasons I deem it my duty to dissent in this case.

SAUVINET *vs.* WALKER. } Dissenting opinion.

HOWE, J.:

The provision of the Constitution and the statute under which this suit was brought should be enforced so long as they are the law of this State. We cannot treat them as dead-letters, and the plaintiff has, there fore, a cause of action. But after hearing the dissenting opinion of Mr. Justice Wyly, I am inclined to agree with him that the damages are excessive.

130 *Decree.—Extract from the minutes.*

MONDAY, *January 29th*, 1872.

The court was duly opened pursuant to adjournment. Present, their honors, John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

His honor Justice Taliaferro pronounced the judgment and decree of the court in the following cases:

C. S. SAUVINET *vs.* J. A. WALKER ET AL. } No. 3513.

On appeal from the 8th district court for the parish of Orleans.

It is ordered, adjudged, and decreed that the judgment of the district court be affirmed with costs.

131 (Mr. Justice Wyly, dissenting, read a separate opinion herein. His honor Justice Howe, concurring with Mr. Justice Wyly, filed a dissenting opinion in this case.)

Petition for a rehearing.—Filed February 16, 1872.

Supreme court.

C. S. SAUVINET, APPELLEE, *vs.* JOSEPH A. WALKER, APPELLANT. } No. 3513.

We most respectfully ask for a hearing in this case upon the following grounds, viz:

1st. That your honors have failed to take any notice of our objections to the unconstitutionality and illegality of act No. 23 of the statutes of 1871, under the provisions of which this case was decided by the lower court, after the jury had disagreed. This point was urged with great earnestness by us, both before the district judge and your honors

132 and the former occupied the larger part of his quite lengthy reasons for judgment in disposing of it, and we trust that this court will not leave it without passing upon it.

2d. That the decision of this court upon the amount of damages to be inflicted upon the defendant as a punishment, is, in itself, a certain indication that such a law conferring upon a single judge unlimited power to punish is contrary to the principles of a republican form of government; and that the only safe measure of damages in such cases is that assessed by a jury, which doctrine has always heretofore been held by this court. See cases cited in our original brief.

In this connection we would also call attention to the fact that the case of Larrien vs. Dumonteil was submitted for decision with this case, and remains undecided by your honors. The facts are precisely the
133 same as in the case at bar, and the jury in that case found a verdict for the defendant.

3d. That the damages allowed by the decree are excesive. Upon this point we can add nothing to the very strong arguments used by Mr. Justice Wyly in his dissenting opinion.

Wherefore defendant and appellant prays that a rehearing may be granted him.

All of which is respectfully submitted.

A. A. ATTOCHA,
HORNOR & BENEDICT,
Of Counsel.

New Orleans, February 8th, 1872.

Opinion.—(Rehearing refused.)—Filed March 11, 1872.

Supreme court.

C. S. SAUVINET
vs.
J. A. WALKER. } No. 3513.

134 Mr. Justice TALIAFERRO:

In the application for a rehearing in this case, the question as to the constitutionality of the act of the legislature under which the judgment against the defendant was rendered is pressed upon the consideration of the court. We are not aware of the existence of any constitutional provision making it imperative upon the legislature to accord a trial by jury in all civil cases. It was competent for the law-making power to provide that cases like the one before us should be tried without the intervention of a jury. Therefore it had the right to prescribe, as it did in this class of cases, that issues of the sort here presented should be tried by a jury if any party to the suit pray for a jury, and to provide, in the event the jury do not agree, or fail to render a verdict either for the plaintiff or defendant, that the case be determined
135 by the judge.

No facts appear on the record shewing that the damages awarded are excessive.

The application for a rehearing is refused.

Decree.—Extract from the minutes.

MONDAY, *March* 11, 1872.

The court was duly opened, pursuant to adjournment.

Present, their honors John T. Ludeling, chief justice, and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

His honor Judge Taliaferro pronounced the judgment and decree of the court in the following case.

C. S. SAUVINET
vs.
J. A. WALKER ET AL. } No. 3513.

The application for a rehearing is refused.

136 *Petition for writ of error.—Filed March* 1?, 1872.

Supreme court of Louisiana.

JOSEPH A. WALKER, PL'FF IN ERROR,
vs.
CHARLES S. SAUVINET, DEF'T IN ERROR. } No. 3513.

To the hon. chief justice and associate justices of the supreme court of Louisiana:

The petition of Joseph A. Walker, defendant in a cause wherein Charles S. Sauvinet is plaintiff, with respect represents to your honors:

That he is aggrieved by the final judgment in the supreme court of Louisiana, over which your honors preside, (said court being the highest of record in this State,) herein rendered against your petitioner and in favor of said Charles S. Sauvinet; that in said suit were drawn in question, as appears on the face of the record thereof, certain
137 rights, privileges, and immunities claimed by petitioner under the Constitution of the United States, and especially under section four of article four thereof, and under article seven and section one of article fourteen in the amendments thereto.

That said rights and privileges have been adjudicated upon adversely to petitioner, who is advised and informed that there is error in said adjudication, by which he conceives himself aggrieved and injured; that he wishes to have said proceedings re-examined, and said final decree corrected by the Supreme Court of the United States.

Wherefore petitioner prays that this hon. court will grant him a "writ of error," returnable to the Supreme Court of the United States in due course of proceedings, the same to operate as a supersedeas; that the amount of bond to be furnished be fixed; that citation
138 in error be signed and issued, and for general relief.

And as in duty bound, &c.

(Signed) HORNOR & BENEDICT,
and A. A. ATTOCHA,
Att'ys for Pl'ff in Error.

2, 17–72.

Order.

The within petition being considered, it is ordered that a writ of error be allowed petitioner, the same to operate as a supersedeas. returnable to the Supreme Court of the United States on the first Monday of December next, on his executing bond conditioned according to law in the sum of two thousand dollars with good security; and that citation in errror be issued.

NEW ORLEANS, *March twelfth*, 1872.

(Signed) JNO. T. LUDELING,
Chief Justice Supreme Court of Louisiana.

139 *Bond for writ of error.—Filed March* 13, 1872.

Supreme court of Louisiana.

JOSEPH A. WALKER
vs.
C. S. SAUVINET. } No. 3513.

Know all men by these presents, that we, Joseph A. Walker, as principal, and Hugh McCloskey, Tho's H. Handy, A. W. Merriam, William Schneider, as sureties, are held and firmly bound unto C. S. Sauvinet in the full and just sum of two thousand dollars, to be paid to the said C. S. Sauvinet, the clerk of the supreme court of Louisiana, or any party in interest, his certain attorney, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twelfth day of March, in the year of our Lord one thousand
140 eight hundred and seventy-two. Whereas, lately at a session of the supreme court of Louisiana, holden in the city of New Orleans, in a suit depending in said supreme court, wherein C. S. Sauvinet was plaintiff and Jos. A. Walker was defendant, judgment was rendered against the said Joseph A. Walker defendant, and the said Joseph A. Walker having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said C. S. Sauvinet citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above above obligation is such, that if the said Joseph A. Walker shall prosecute his writ to effect, and
141 answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) J. A. WALKER. [L. S.]
(Signed) HUGH McCLOSKEY. [L. S.]
(Signed) THO'S H. HANDY. [L. S.]
(Signed) A. W. MERRIAM. [L. S.]
(Signed) WILLIAM SCHNEIDER. [L. S.]

Sealed and delivered in presence of—
(S'g'd) JNO. M. HOWELL,
Clerk Sup. Court.

Approved.
(Signed) JNO. T. LUDELING,
Chief Justice Supreme Court of Louisiana.

Writ of error.—Filed March 13, 1872.

JOSEPH A. WALKER, PL'FF IN ERROR,
versus
CHARLES S. SAUVINET, DEF'T IN ERROR. } No. 3513.

UNITED STATES OF AMERICA, *ss :*

142 The President of the United States, to the honorable the judges of the supreme court of the State of Louisiana, fifth circuit, and holding sessions at New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or one of you, being the highest court of law or equity of the State of Louisiana in which a decision could be had, in the suit between Joseph A. Walker and C. S. Sauvinet, wherein were drawn in question certain rights and privileges claimed by said Joseph A. Walker, under the Constitution of the United States, and more specially under section four of article four thereof, and under article seven and section one of article fourteen in the amendments thereto, a manifest error hath hap-

143 pened, to the great damage of the said Joseph A. Walker, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be

144 done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twelfth day of March, in the year of our Lord one thousand eight hundred and seventy-two.

(Signed) [SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

Citation.

Supreme Court of Louisiana.

JOSEPH A. WALKER
vs.
C. S. SAUVINET. } No. 3513.

THE UNITED STATES OF AMERICA,
Supreme Court of Louisiana :

The President of the United States to Charles S. Sauvinet, of the parish of Orleans, State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Su-

145 preme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein Joseph A. Walker is plaintiff in error, and you are notified to show cause, if any there be, why the judgment rendered against the said Jos. A. Walker, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twelfth day of March, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] (Signed) JNO. T. LUDELING,
Chief Justice Supreme Court,
of the State of Louisiana.

146 *Sheriff's return.—Filed March 18th, 1872.*

Received 15th March, 1872, and on the 16th day of the same month and year I served a true copy of the within citation on C. S. Sauvinet, defendant herein, personally. This service being made by me on account of said Sauvinet being at this time sheriff of the parish of Orleans.

Returned 16th March, 1872.

(Signed) P. CREAGH,
Coroner 1st, 4th, 5th, & 6th dist's.

Affidavit.

On this twenty-first day of September, A. D. 1872, personally appeared before the undersigned, P. Creagh, coroner for the first, fourth, fifth, and sixth district, of the city of New Orleans, who, being duly sworn, deposes and says, that on the 15th March, 1872, he served a copy of the within citation on C. S. Sauvinet, civil sheriff of the parish of
147 Orleans, State of Louisiana, by handing the same to him personally, as stated in his official return hereon.

(Signed) P. CREAGH.

Sworn to and subscribed before me this 21st day of September, A. D. 1872.

[SEAL.] (Signed) W. L. EVANS,
Second Justice Peace, Parish of Orleans.

Certificate of the Clerk.

UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana:

I, John Miller Howell, clerk of the supreme court of the State of Louisiana, at New Orleans, do hereby certify that the foregoing one hundred and forty-seven (147) pages contain a true copy of the transcript of the proceedings had in the eighth district court for the
148 parish of Orleans in a certain suit wherein C. S. Sauvinet was plaintiff and J. A. Walker et al. were defendants, and also of the proceedings had in this supreme court on the appeal taken by said J. A. Walker, which appeal is now on the files thereof, under No. 3513.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this nineteenth day of

October, anno Domini one thousand eight hundred and seventy-two, and in the ninety-seventh year of the Independence of the United States of America.

[SEAL.] JNO. M. HOWELL, *Clerk.*

149 To the hon. chief justice and associate justices of the supreme court of Louisiana:

The petition of Joseph A. Walker, defendant in a cause wherein Charles S. Sauvinet is plaintiff, with respect represents to your honors:

That he is aggrieved by the final judgment in the supreme court of Louisiana, over which your honors preside, (said court being the highest of record in this State,) herein rendered against your petitioner, and in favor of Charles S. Sauvinet; that in said suit were drawn in question, as appears on the face of the record thereof, certain rights, privileges, and immunities claimed by petitioner under the Constitution of the United States, and especially under section four of article four thereof, and under article seven and section one of article fourteen in the amendments thereto.

That said rights and privileges have been adjudicated upon adversely to petitioner, who is advised and informed that there is error in said adjudication, by which he conceives himself aggrieved and injured; that he wishes to have said proceedings re-examined, and said final decree corrected by the Supreme Court of the United States.

Wherefore petitioner prays that this hon. court will grant him a writ of error, returnable to the Supreme Court of the United States in due course of proceedings, the same to operate as a supersedeas; that the amount of bond to be furnished be fixed; that citation in error be signed and issued, and for general relief.

And as in duty bound, &c.

HORNOR & BENEDICT & A. A. ATOCHA,
Att'ys for Pl'ff in Error.

2, 7–72.

150 (Indorsed:) Supreme court of Louisiana. No. 3513. Joseph A. Walker, pl'ff in error, vs. Charles S. Sauvinet, def't in error. Petition for writ of error. Hornor & Benedict, att'ys for pl'ff in error. Filed March 13th, 1872. C. M. P. Julian, dep'y cl'k.

The within petition being considered, it is ordered that a writ of error be allowed petitioner, the same to operate as a supersedeas, returnable to the Supreme Court of the United States on the first Monday of December next, on his executing bond, conditioned according to law, in the sum of two thousand dollars, with good security, and that citation in error be issued.

New Orleans, March twelfth, 1872.

JNO. T. LUDELING,
Chief Justice Supreme Court of Louisiana.

151 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, fifth circuit, and holding sessions at New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or one of you, being the highest court of law or equity of the State of Louisiana in which a decision could be had, in the suit between Joseph A. Walker and C. S. Sauvinet, wherein were drawn in question certain rights and privileges claimed by said Joseph A. Walker, under the Constitution of the United States, and more specially under section four of article four thereof, and under article seven and section one of article fourteen in the amendments thereto, a manifest error hath happened, to the great damage of the said Joseph A. Walker, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this twelfth day of March, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 3513. Joseph A. Walker, pl'ff in error, versus Charles S. Sauvinet, def't in error. Writ of error, supreme court of L'a. Filed March 13th, 1872. Jno. M. Howell, clerk.

152 THE UNITED STATES OF AMERICA,
Supreme Court of Louisiana:

The President of the United States to Charles S. Sauvinet, of the parish of Orleans, State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana, wherein Joseph A. Walker is plaintiff in error; and you are notified to show cause, if any there be, why the judgment rendered against the said Joseph A. Walker as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twelfth day of March, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] JNO. T. LUDELING,
Chief Justice Supreme Court of the State of Louisiana.

153 Supreme court of L'a. Filed March 18th, 1872.
C. M. P. JULIAN,
Dep'y Clerk.

(Indorsed:) Supreme court of Louisiana. No. 3513. Joseph A. Walker vs. C. S. Sauvinet. Citation.

Sheriff's return.

Received 15 M'ch, 1872, and on the 16th day of the same month and year I served a true copy of the within citation on C. S. Sauvinet, defendant herein, personally; this service being made by me on account of said Sauvinet being at this time sheriff of the parish of Orleans.
Returned 16 M'ch, 1872.

P. CREAGH,
Coroner 1st, 4th, 5th, & 6th Dist's.

On this twenty-first day of September, A. D. 1872, personally appeared before the undersigned, P. Creagh, coroner for the first, fourth, fifth & sixth district' of the city of New Orleans, who, being duly sworn, deposes and says that on the 15th March, 1872, he served a copy of the within citation on C. S. Sauvinet, civil sheriff of the parish of Orleans, State of Louisiana, by handing the same to him personally, as stated in his official return hereon.

P. CREAGH.

Sworn to and subscribed before me this 21' day of September, A. D. 1872.

W. L. EVANS,
Second Justice Peace, Parish of Orleans, La.

154 Know all men by these presents that we, Joseph A. Walker, as principal, and Hugh McCluskey, Theo. H. Handy, A. W. Merriam, William Schneider, as sureties, are held and firmly bound unto C. S. Sauvinet in the full and just sum of two thousand dollars, to be paid to the said C. S. Sauvinet, the clerk of the supreme court of Louisiana, or any party in interest, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twelfth day of March, in the year of our Lord one thousand eight hundred and seventy-two.

Whereas lately, at a session of the supreme court of Louisiana, holden in the city of New Orleans, in a suit depending in said supreme court, wherein C. S. Sauvinet was plaintiff and Jos. A. Walker was defendant, judgment was rendered against the said Joseph A. Walker, defendant, and the said Joseph A. Walker, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said C. S. Sauvinet, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such that if the said Joseph A. Walker shall prosecute his writ to effect, and answer all

damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

J. A. WALKER. [L. S.]
HUGH McCLOSKEY. [L. S.]
THO'S H. HANDY. [L. S.]
A. W. MERRIAM. [S. S.]
WILLIAM SCHNEIDER. [L. S.]

Sealed and delivered in the presence of—

JNO. M. HOWELL,
Clerk Sup. Court.

Approved.

JNO. T. LUDELING,
Chief Justice Supreme Court of Louisiana.

(Indorsed:) Supreme court of Louisiana. No. 3513. Joseph A. Walker vs. C. S. Sauvinet. Bond for writ of error. Filed March 13th, 1872. C. M. P. Julian, dep'y clerk. John W. Madden, stationer and printer, 73 Camp st.

(Indorsement on cover:) No. 350. Joseph A. Walker, plaintiff in error, vs. Charles S. Sauvinet. Louisiana sup. court. Filed 7th December, 1872.

REC. 350—4

In the Supreme Court of the United States.

October Term, 1874.

JOSEPH A. WALKER,
Plaintiff in Error,
vs.
CHARLES S. SAUVINET,
Defendant in Error.

No. 350.

In error to the Supreme Court of the State of Louisiana.

Brief of Plaintiff in Error.

Plaintiff in error was defendant in the eighth district court of New Orleans, in which he was sued for ten thousand dollars damages by Sauvinet for having refused to sell refreshments to him though he offered to pay the usual price for them, because he, Sauvinet, was a colored person. The cause was tried by a jury who did not agree, and then the court of original jurisdiction, under a statute of Louisiana, gave judgment for $1,000 as exemplary damages, and all costs of suit.

Record, pp. 1, 2, 25, 34.

The judgment was affirmed by a majority of the supreme

1st. Because the jury has a right, by a general verdict, to decide both law and fact, and no judge can lawfully compel the conscience of a jury on a constitutional question.

2d. Because if the State law was to be enforced at all, it was for the reason the defendant in error had been refused a drink on account of his race or color, *i. e.*, on account of his being a colored man, and unless the jury found him to be such he had no right of action; the refusal of the judge therefore was error.

All of which is respectfully submitted.

DURANT & HORNOR,
for Walker, Plaintiff in Error.

United States Supreme Court.

JOSEPH A. WALKER,
PLAINTIFF IN ERROR,
versus
CHARLES S. SAUVINET,
DEFENDANT IN ERROR.

No. 6.

OCTOBER TERM OF 1875.

WRIT OF ERROR TO THE SUPREME COURT OF LOUISIANA.

BRIEF OF DEFENDANT IN ERROR.

I. Plaintiff in error, in his petition for his writ of error, alleges "That in said suit were drawn in question, as appears on the face of the Record thereof, certain rights, privileges, and immunities claimed by petitioner under the Constitution of the United States and especially under section four of article four thereof, and under article seven and section one of article fourteen in the amendments thereto; that said rights and privileges have been adjudicated upon adversely to petitioner."

Under these allegations, the writ of error was allowed.

Rec., p. 46,

II. Plaintiff was the owner and keeper of a coffee house, a place of public resort, licensed under the laws of the State, to which defendant in error resorted, and requested to be served and supplied with refreshments there kept and sold, with offer of payment, &c., conducting himself orderly and respectfully. His request was refused because he was a colored person, and was ordered to leave the establishment. This was wholly on the ground of color, defendant in error being a respectable person, and at that time Sheriff of the Parish of Orleans.

After allegations of fact, defendant in error set up that, "under the constitution and laws of the State, he had the right with others, of whatever class or color, of access to said establishment and to be supplied with such refreshments as were there being sold to others."

Rec., pp. 1 and 2.

The only defense set up was "a general denial," and on this issue the case went to trial.

Rec., p. 4.

There was judgment for one thousand dollars damages, against the plaintiff in error.

Rec., p. 34.

III. On motion for a new trial, it was set up:

First, "that the act under which this action is brought is null and void by reason of its being violative of the Constitution of the United States and of the State of Louisiana."

Sixth, "that by the fourteenth amendment of the Constitution of the United States certain inalienable rights are guaranteed to the defendant (plaintiff in

error) which the laws of the State cannot deprive him of, among which is the trial by jury."

Rec., pp. 34 & 35.

This motion being overruled, an appeal was taken to the Supreme Court of the State.

Rec., pp. 35 & 36.

IV. The Supreme Court of the State, in deciding the case, state the facts substantially as above set forth, but in no way, even by implication, found it necessary to pass upon any Federal question. Even the dissenting opinion of Mr. Justice Wyly, concurred in by Mr. Justice Howe, claims only a reduction of damages.

Rec., pp. 38 to 40.

A rehearing was asked for; the second and third grounds being in relation to the damages, as excessive; the first only, setting up the unconstitutionality of Act No. 23 of 1871 of Louisiana, under which the suit was brought, "under the provisions of which this case was decided by the lower court, after the jury had disagreed."

Rec., p. 40.

The Court in refusing the rehearing say that, "We are not aware of the existence of any constitutional provision making it imperative upon the legislature to accord a trial by jury in all civil cases. It was competent for the law-making power to provide that cases like the one before us should be tried without the intervention of a jury. Therefore, it had the right to prescribe, as it did in this class of cases, that issues of the sort here presented should be tried by a jury if any party in the suit pray for a jury, and to provide, in the event the jury do not agree, or fail to render a

verdict either for the plaintiff or defendant, that the case be determined by the Judge."

Rec., p. 41.

V. The only possible Federal question then raised, even collaterally, (for no Federal question was raised by the regular pleadings,) was that the Court of the first instance decided the case, on the failure of the jury to agree on a verdict.

It is this feature of Act No. 23 of 1871, which is complained of, as in violation of the Constitution of the United States.

There is nothing in the act complained of which conflicts with the guarantee of a Republican form of government to the several States,

Article VII of the amendments to the Constitution provides that "in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." But it has been repeatedly held, "that the amendments to the Constitution do not extend to the States."

Livingston's Lessee vs. Moore, 7 Pet., 551.

That "they are exclusively restrictions upon Federal power, intended to prevent interference with the rights of the States, and of their citizens."

Fox vs. Ohio, 5 How., 434.

James vs. Commonwealth, 12 S. & R., 221.

Barker vs. the People, 3 Cow., 686.

See also 7 Peters, 243; 2 Gallis. C. C. R., 138.

But this point it would seem was abandoned in the State Court.

Rec., p. 31.

It is hardly to be conceived, that the first section of the fourteenth amendment, can be found to have

so large a scope, as to prohibit a State legislature from passing the law in question. Is it one of "the privileges or immunities of citizens of the United States," that his cause shall be tried in the State courts by a jury, and tried until a verdict shall be found? In the Slaughter-House cases, the question of what constituted the privileges and immunities of citizens was discurred *in extenso*. But so far, no case has been found in which a trial by jury in a State court, was considered one of the rights, privileges or immunities of citizens of the United States.

The Slaughter House Cases, 16 Wall., 36.
Corfield vs. Coryell, 4 W. C. C., 380-1.
United States vs. Williamson, 4 Am. L. R., 19.
Conner vs. Elliot, 18 How., 591.

Nor does the prohibition, that no "State shall deprive any person of life, liberty or property without due process of law," apply to jury trials.

See Murray's Lessee vs. Hoboken Land Co., 18 How., 276.

It is therefore respectfully submitted:—

1st, That, no Federal question was raised by the pleadings and decision in this cause; and,

2nd, That, if there had been, the act of the Legislature of Louisiana is not in conflict with any provision of the Constitution of the United States.

It is therefore submitted that this writ of error should be dismissed.

J. Q. A. FELLOWS,
Attorney for Defendant in Error.

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